

**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

**RESPONDING MOTION RECORD OF HAIDAR OMARALI
IN HIS CAPACITY AS REPRESENTATIVE PLAINTIFF in *OMARALI v. JUST ENERGY*
(Motion for Authorization Order, Meetings Order,
Stay Extension and Other Relief)
(returnable June 7, 2022)**

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To: See Service List

**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

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(each, an “**Applicant**”, and collectively, the “**Applicants**”)

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(as at May 13, 2022)

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<p>ENERSOURCE HYDRO MISSISSAUGA INC. 3240 Mavis Road Mississauga, ON L5C 3K1</p> <p>Fax: 905.566.2727</p> <p>Copy to:</p> <p>ALECTRA UTILITIES CORPORATION 2185 Derry Road West Mississauga, ON L5N 7A6</p>	<p>Email: emuscat@enersource.com</p> <p>Copy to:</p> <p>Email: regulatoryaffairs@alecrautilities.com</p>
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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

AFFIDAVIT OF VLAD ANDREI CALINA
(Affirmed May 26, 2022)

I, **Vlad Andrei Calina**, of the City of Toronto, in the Province of Ontario, AFFIRM and say:

1. I am a lawyer with Koskie Minsky LLP, Class Counsel in the class proceeding styled *Omarali v Just Energy* bearing Court File No. CV-15-527493-00CP (the "**Omarali Action**") and, as such, I have knowledge of the matters hereinafter deposed. I have also been provided information by David Rosenfeld, the lawyer with primary carriage of the Omarali Action, and James Harnum, a lawyer with Koskie Minsky LLP involved in this proceeding, which I believe to be true.

A. Nature of the Omarali Action

2. The Omarali Action was commenced by Statement of Claim against Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP (collectively, "**Just Energy**") on May 4, 2015. The Statement of Claim was amended on November 13, 2015. A copy of the Amended Statement of Claim is attached as **Exhibit "A"**.

3. As set out in the Amended Statement of Claim, the Omarali Action concerns Just Energy's misclassification of just over 7,700 employees as "independent contractors", and its failure to comply with the minimum protections of the *Employment Standards Act, 2000* ("**ESA**") – including minimum wage, overtime pay, vacation pay, public holiday and premium pay.

B. Summary of the basis of the Class Members' claims

4. This section provides a summary description of the evidence submitted by the Representative Plaintiff in support of the proofs of claim filed in this proceeding on behalf of all Class Members (defined below) in the Omarali Action.

5. In support of the proofs of claim, Class Counsel provided: (i) the Amended Statement of Claim; (ii) the Representative Plaintiff's motion record in support of his summary judgment motion hearing in June 2019 ("**Summary Judgment Motion**"); (iii) the transcript brief filed in support of the Summary Judgment Motion; and (iv) the Representative Plaintiff's moving factum for the Summary Judgment Motion. Copies of the supporting documents have been provided to Just Energy and the Monitor, and I reviewed those documents prior to affirming this affidavit.

6. The Representative Plaintiff's moving factum on the Summary Judgment Motion (a copy which is attached as **Exhibit "B"**) summarizes the extensive evidence submitted by the Plaintiff in support of the proofs of claim, including the following:

- (a) Just Energy does not produce or distribute gas and electricity – rather it buys and resells it to consumers and profits on the difference;¹
- (b) To get customers to sign these contracts, Just Energy sends an army of marketers door-to-door seeking to get customers to sign Just Energy contracts – called "Sales Agents";²
- (c) To organize this army of marketers, Just Energy set up a hierarchical sales division:
 - (i) Just Energy owns or leases regional offices;
 - (ii) The regional offices have Just Energy signs on the front, Just Energy signs inside, and maintain only Just Energy promotional materials;
 - (iii) These offices are partly staffed by Just Energy "employees" (as deemed by Just Energy) and run by "independent contractors" called "National" or "Regional Distributors";
 - (iv) Regional Distributors operate the Just Energy offices and manage the "independent contractors" at that office on behalf of Just Energy (including "Crew Coordinators" and Sales Agents);
 - (v) Crew Coordinators help supervise Sales Agents and take direction from Regional Distributors; and
 - (vi) All Sales Agents must operate out of a Just Energy office;³
- (d) Just Energy imposes a commission-based compensation structure for this sales channel:
 - (i) Sales Agents only get paid fixed commission for contracts they originate;
 - (ii) Crew Coordinators get paid on commission on contracts they originate and receive commissions on contracts originated by Sales Agents they supervise; and

¹ Representative Plaintiff's moving factum at para. 7.

² Representative Plaintiff's moving factum at para. 8.

³ Representative Plaintiff's moving factum at paras. 10-11.

- (iii) National/Regional Distributors receive commissions on contracts originated by all Sales Agents and Crew Coordinators out of their offices;⁴
- (e) Just Energy centrally recruit[s] Sales Agents using employees (as deemed by Just Energy) whose job it is to recruit Sales Agents on a daily basis. Those responding [to the recruiters] speak to Just Energy and are directed to a particular Just Energy office. Then, Just Energy recruiters at each office (employees as deemed by Just Energy) conduct "interviews" and sign the Independent Contractor Agreements ("ICA") with the Sales Agents;⁵
- (f) The ICA provides:
 - (i) Sales Agents were to "market" and "solicit" contracts for the benefit of Just Energy LP;⁶
 - (ii) Sales Agents had to agree to abide by the terms and conditions delivered by Just Energy;⁷
 - (iii) Sales Agents were forbidden from working with any other company that competes with Just Energy during the course of the contract and for three years following termination;⁸
 - (iv) Sales Agents were compensated by way of a commission schedule⁹ that Just Energy can unilaterally change in their sole discretion without advanced notice;¹⁰
 - (v) Just Energy unilaterally "claw backs" Sales Agents' commission when a consumer cancels or Just Energy deems the contract to be not "Effective";¹¹
 - (vi) Just Energy had an unfettered and unilateral right to amend the contract at any time by posting the amended contract at the office where the Sales Agent's commissions are received.¹²
- (g) Sales Agents take part in an orientation process [that is] standard and dictated by Just Energy:
 - (i) After signing the ICA, Regional Distributors or recruiters administer Just Energy's training through its 5-module training program;

⁴ Representative Plaintiff's moving factum at para. 12.

⁵ Representative Plaintiff's moving factum at para. 13.

⁶ Representative Plaintiff's moving factum at para. 18.

⁷ Representative Plaintiff's moving factum at para. 18.

⁸ Representative Plaintiff's moving factum at para. 18.

⁹ Representative Plaintiff's moving factum at para. 18.

¹⁰ Representative Plaintiff's moving factum at para. 25.

¹¹ Representative Plaintiff's moving factum at para. 27.

¹² Representative Plaintiff's moving factum at para. 18.

- (ii) Sales Agents are also provided with an Ontario Energy Board ("**OEB**") training module and have to pass an OEB examination;
- (iii) Then Sales Agents are provided with their badge and sent into the field for more direct training and to market for Just Energy.¹³
- (h) Just Energy's centralized training directs Sales Agents on how to do their job for Just Energy including: when and how long to market; how to dress; how to approach customers; how to explain Just Energy products; how to handle questions; and how to explain and sign a contract;¹⁴
- (i) Just Energy provides direction on how Sales Agents perform their work:
 - (i) daily morning meetings are held where best practices are explained;
 - (ii) daily role playing i[s] conducted before heading to the field;
 - (iii) a "Sales Binder" provides direction to [Sales Agents] on how to perform their work, including sales scripts and objection handling scripts;
 - (iv) job shadowing is conducted in the field; and
 - (v) supervision and direction is provided by Crew Coordinators in the field;¹⁵
- (j) Just Energy also directs Sales Agents on when and where they should market:
 - (i) marketing locations are determined by the Regional Distributors and Crew Coordinators during daily morning meetings;
 - (ii) Sales Agents are then driven to the field in vans by Crew Coordinators;
 - (iii) iPads are used to monitor and track Sales Agents in real time and then direct resources accordingly;
 - (iv) Crew Coordinators or Sales Agents are threatened with termination if they don't market in the approved areas;¹⁶
- (k) Just Energy has an extensive system to monitor and track Sales Agents' performance and discipline non-compliance including: a dedicated department that monitors Sales Agents' compliance with their work requirements; and a "Compliance Matrix" directing the discipline to be imposed for various conduct, including suspensions, fines and termination.¹⁷

¹³ Representative Plaintiff's moving factum at para. 14.

¹⁴ Representative Plaintiff's moving factum at para. 16.

¹⁵ Representative Plaintiff's moving factum at para. 19.

¹⁶ Representative Plaintiff's moving factum at para. 20.

¹⁷ Representative Plaintiff's moving factum at para. 21.

- (l) Sales Agents "have no contemporaneous or ongoing relationship with customers, the relationship is exclusive to Just Energy":
 - (i) all energy contracts are made between Just Energy and the consumer;
 - (ii) Just Energy performs finalization and confirmation of all contracts;
 - (iii) Just Energy has sole discretion on whether to accept or reject a potential contract;
 - (iv) Just Energy handles customer complaints;
 - (v) Just Energy addresses renewals of consumer contracts; and
 - (vi) when a Sales Agent leaves Just Energy they get no residual commission from that consumer contract.¹⁸

i. The Omarali Action is Certified

7. On July 27, 2016, Justice Belobaba certified the Omarali Action as a class proceeding with 13 common issues. A copy of the certification decision and certification order ("**Certification Order**") are attached as **Exhibit "C"** and **Exhibit "D"** respectively.¹⁹

8. Mr. Omarali was appointed as the "Representative Plaintiff" and Koskie Minsky was appointed as "Class Counsel" for the following class of people certified in the Certification Order: "[a]ny person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement" (the "**Class**" or "**Class Members**").

9. In accordance with the Certification Order, Just Energy provided a list of all known Class Members and their contact information on February 28, 2017 ("**Class List**"). I reviewed the Class List and confirm that Just Energy identified 7,914 Class Members in the Class List.

¹⁸ Representative Plaintiff's moving factum at para. 23 and footnote 43.

¹⁹ Just Energy's motion for leave to appeal the certification decision was dismissed by the Divisional Court on November 17, 2016.

10. The opt out deadline was June 20, 2017. A total of 191 Class Members opted out. As a result, the Class consists of 7,723 members.

ii. Just Energy Reclassifies Sales Agents as Employees

11. Through discovery it was confirmed that on November 28, 2016 Just Energy formally adjusted its own classification of its then current Sales Agents from "independent contractors" to employees. They called it the "Nov 28, 2016 Ontario Employee conversion". In oral discoveries it was confirmed that the same formal adjustment of Just Energy's classification of Sales Agents from "independent contractors" to employees occurred in the United States. Through discovery it was confirmed that the new title for Sales Agents after the classification adjustment was "Energy Advisor". It was also confirmed that the Sales Agents whose classification was adjusted were to be paid "hourly wages with overtime..." The discovery evidence for the forgoing includes:

- (a) Role Description: Sales, Exhibit "12" of the Affidavit of Michelle Alexander sworn, September 5, 2018 ("**Alexander Affidavit**"), Plaintiff's Summary Judgment Motion Record ("**Plaintiff's MR**"), p. 724, a copy of which is attached as **Exhibit "E"**; and
- (b) Email exchange between Rosalba Gullo, Richard Teixeira and Ryan Parnell, Exhibit "13" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 728, a copy of which is attached as **Exhibit "F"**;
- (c) Transcripts of the examination for discovery of Ravi Maharaj on behalf of Just Energy Group Inc., January 25, 2018, Q. 1134-1138, 1190-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922-923, 927-928, a copy of which is attached as **Exhibit "G"**.

iii. Discoveries and Summary Judgment

12. After certification the parties proceeded to exchange productions in summer 2017 and conducted examinations for discovery in late January 2018.

13. Thereafter the Representative Plaintiff moved for summary judgment on the 13 common issues certified in the Certification Order. The Representative Plaintiff served motion records including 7 volumes of evidence from 7 affiants. Just Energy responded by submitting evidence from 4 affiants. Cross-examinations of 8 affiants were conducted. Facta were exchanged. Copies of the Representative Plaintiff's motion record, the Transcript Brief and the Representative Plaintiff's factum were attached to the Representative Plaintiff' proofs of claim submitted on behalf of all 7,723 Class Members in this proceeding.

14. On June 21, 2019, Justice Belobaba directed that all 13 common issues shall proceed to trial and reserved the costs of the summary judgment motion to the trial judge. A copy of the summary judgment decision is attached as **Exhibit "H"**.

iv. The Omarali Action was Set for Trial

15. On November 20, 2019, Justice Chalmers scheduled the Omarali Action for a 20-day trial starting on November 15, 2021. A copy of the endorsement of Justice Chalmers is attached at **Exhibit "I"**.

C. Impact of the CCAA Proceedings

16. On March 9, 2021, the Applicants (including Just Energy) filed for protection from their creditors, and obtained an order from this Court (the "**Initial Order**") commencing these proceedings (the "**CCAA Proceedings**"). A copy of the Initial Order is attached at **Exhibit "J"**.

17. On September 8, 2021, Just Energy served its motion record in support of its motion seeking approval of a claims process. On September 10, 2021 Class Counsel wrote to counsel for Just Energy seeking confirmation that the claims process order sought by Just Energy would allow

for the Representative Plaintiff to submit a single proof of claim on behalf of all Class Members instead of being required to file separate proofs of claim for each Class Member. A copy of the September 10, 2021 correspondence is attached as **Exhibit "K"**.

18. On September 15, 2021, this Court granted an order approving a claims process.

19. On September 21, 2021, Class Counsel wrote to Just Energy's insolvency counsel and the Monitor's counsel to address the impact of the CCAA Proceedings, as the trial scheduled for November 2021 could not move ahead due to the stay of proceeding. A copy of the September 21, 2021 letter (without attachment) is attached at **Exhibit "L"**.

20. Class counsel stressed in its September 21, 2021 letter that class members have valid claims for unpaid wages against Just Energy's directors under the ESA, the *Business Corporation Act (Ontario)* ("**OBCA**") or the *Canada Business Corporation Act* ("**CBCA**") and that those claims would be asserted in the CCAA Proceedings as part of the claims process.

21. On October 29, 2021, Class Counsel submitted proof of claim forms against Just Energy and their directors on behalf of all Class Members. A copy of the cover letter enclosing both proof of claim forms, delivered by email to the Monitor, is attached as **Exhibit "M"**. Copies of the proof of claim submitted (without supporting documents) are included as exhibits "I" and "J" to the affidavit of Michael Carter sworn May 12, 2022 submitted by Just Energy in support of this motion seeking a meeting order.

22. I am advised by James Harnum that at no time has Just Energy ever advised Class Counsel that the filing of a single proof of claim on behalf of all Class Members would result in all Class Members having only a single vote collectively on any future plan of compromise.

23. On February 2, 2022, Just Energy disallowed all the Class Members' claims. On February 24, 2022, Class Counsel filed a Notice of Dispute on behalf of all Class Members in the Omarali Action.

24. I am advised by David Rosenfeld, that since the September 15, 2021 Claims Procedure Orders, aside from receipt of Just Energy's Notice of Disallowance on February 2, 2022, neither the Monitor or Just Energy have contacted Class Counsel to discuss the Plaintiff's proofs of claim let alone contacted Class Counsel to discuss possible resolution, or to advise Class Counsel that the Plaintiff's claim has been referred to a Claims Officer or the Court for adjudication in accordance with paragraph 39 of the Claims Procedure Order. Class Counsel has also not been contacted by anyone to discuss or advise of the process or timing of a procedure for the adjudication of the Plaintiff's and Class' claims.

D. Just Energy's Disclosure of its Efforts to Recover Costs from ERCOT

25. In its Pre-Filing Report dated March 9, 2021, the Monitor explained that, among other things, Just Energy's ability to operate as a going concern was jeopardized when "Texas experienced an unprecedented and catastrophic energy crisis [that began] when a powerful winter storm impacted the entire state" because "the Just Energy Group may be liable to ERCOT [the **"Electronic Reliability Council for Texas"**] for an estimated \$250 million." The Monitor explained, however, that "[t]he Just Energy Group is disputing amounts that are owing to ERCOT". No further information was provided in the Pre-Filing Report on the merits of Just Energy's dispute with ERCOT or the dispute's impact on Just Energy's restructuring. A copy of the Pre-Filing Report (being Appendix B of the Monitor's First Report) is attached as **Exhibit "N"**.

26. In the supporting affidavit of Michael Carter, sworn March 16, 2021, which was shown and produced to me prior to affirming this affidavit and which was submitted by Just Energy in support of the initial CCAA orders, Just Energy noted:

- (a) That it "sought CCAA protection because of severe short-term liquidity challenges resulting from an unprecedented and catastrophic winter storm in Texas";
- (b) That it "may have incurred losses and additional costs currently totalling over \$315 million over a seven-day period as a result of the actions of PUTC and ERCOT and the winter storm";
- (c) That "while the Just Energy Group has vigorously disputed the invoices received from ERCOT, under ERCOT's protocols, the Just Energy Group was required to pay those invoices within two business days to avoid having its ERCOT market participant status revoked, ERCOT transferring all of its customers in Texas to a Provider of Last Resort ("POLR") and being subject to a PUTC proceeding to revoke its Retail Electric Provider license"; and
- (d) That it "sought immediate CCAA protection to ensure that it can continue as a going concern, service its significant customer base, maintain employment for its almost 1,000 employees, and preserve enterprise value."

27. In its Third Report dated September 8, 2021, the Monitor reported that on June 16, 2021, the Governor of Texas signed House Bill 4492 ("**HB 4492**"), which provided a mechanism for the recovery of costs referenced in the Monitor's Pre-Filing Report.

28. The Monitor addressed HB 4492 in a section entitled "Texas Legislative Developments". The Monitor explained that HB 4492 "provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including the Just Energy Entities". At the time, the Monitor did not explain what this "mechanism for partial recovery of costs" was, nor did it provide an estimate of the potential recovery for Just Energy. A copy of the Third Report (without appendices) is attached as **Exhibit "O"**. The same information was provided by Just Energy in the affidavit of Michael Carter sworn September 8, 2021.

29. On November 9, 2021, Just Energy released its "2022 Second Quarter Report to Shareholders". In the accompanying Management Discussion and Analysis ("**MD&A**"), Just Energy said that it "anticipates that it will recover at least USD \$100 million" from HB 4492 and that "such proceeds [are] expected to be received in the fourth quarter of fiscal year 2022". The fourth quarter for the fiscal year 2022 for Just Energy would be December 31, 2021 to March 31, 2022. A copy of excerpts of the 2022 Second Quarter Report to Shareholders is attached as **Exhibit "P"**.

30. On December 9, 2021, Just Energy announced an update of its expected recovery from HB 4492 as "approximately USD \$147.5 million." A copy of its press release is attached as **Exhibit "Q"**. In its Fifth Report dated February 4, 2022, the Monitor confirmed this assessment by Just Energy. A copy of the Fifth Report is attached as **Exhibit "R"**.

31. In the supporting affidavit of Michael Carter, sworn February 2, 2022, filed by Just Energy in support of a stay extension order, Just Energy referenced that it had started litigation in November 2021 against ERCOT and PUTC to recover funds Just Energy says were improperly charged ("**ERCOT Adversary Proceedings**").²⁰ I understand that those are the same funds that Just Energy previously deposed led to the liquidity crises precipitating the CCAA Proceeding. A copy of Mr. Carter's affidavit of February 2, 2022 (without exhibits) is attached as **Exhibit "S"**.

32. On February 16, 2022, Just Energy released its "2022 Third Quarter Report to Shareholders". In the accompanying MD&A, Just Energy reiterated that it anticipated a \$147.5 million USD payment as a result of HB 4492, which was now "expected to be received in the

²⁰ Referred to in the proposed Plan of Compromise as the "Adversary Proceedings".

spring of 2022." A copy of excerpts of the 2022 Third Quarter Report to Shareholders is attached as **Exhibit "T"**.

33. In its Sixth Report dated March 2, 2022 and its Seventh Report dated March 22, 2022, the Monitor did not provide an update on the anticipated \$147.5 million USD payment as a result of HB 4492. The Monitor's update on Just Energy's restructuring efforts was limited to a brief discussion of a plan of arrangement. Copies of the Sixth Report (without appendices) and the Seventh Report are attached as **Exhibits "U"** and **"V"** respectively.

34. In the supporting affidavits sworn March 1 and March 21, 2022, respectively, submitted by Just Energy in support of stay extension orders, no information was provided on the anticipated \$147.5 million USD payment as a result of HB 4492 or the current status of the ERCOT Adversary Proceeding. Copies of the affidavits of March 1 and March 21, 2022 (without exhibits) are attached as **Exhibits "W"** and **"X"** respectively.

35. In its Eighth Report dated April 7, 2022, the Monitor did not provide an update on the anticipated \$147.5 million USD payment as a result of HB 4492. The Monitor provided an update on the ERCOT Adversary Proceedings, stating that Just Energy had "commenced litigation against the Electric Reliability Council of Texas ("ERCOT") and the Public Utility Commission of Texas (the "PUCT") in the U.S. Court (the "ERCOT Litigation")." Although the ERCOT Adversary Proceedings was commenced on November 12, 2021, this was the first time that the Monitor included an update on it in its public reports.

36. The Monitor explained that the claim against the PUCT was dismissed. The Monitor said that it "intends to be actively involved in supporting the ERCOT Adversary Proceedings " because it was "of the view that the potential recoveries that might be available to the Just Energy Entities

justifies the ERCOT Adversary Proceedings and the Monitor's involvement therewith." The Monitor did not provide any information on the quantum of potential recoveries justifying its involvement. A copy of the Eight Report is attached as **Exhibit "Y"**.

37. On April 14, 2022 Just Energy brought a motion seeking leave to pursue a s.36.1 claim in the US in connection with the ERCOT Adversary Proceedings. The supporting affidavit of James C. Tecce sworn April 14, 2022 made no mention of the status of the anticipated \$147.5 million USD payment as a result of HB 4492. A copy of the affidavit of James C. Tecce sworn April 14, 2022 (without exhibits) is attached as **Exhibit "Z"**.

38. In its Ninth Report dated April 18, 2022, the Monitor did not provide an update on the anticipated \$147.5 million USD payment as a result of HB 4492.

39. The Monitor did reference the ERCOT Adversary Proceedings explaining that it "relates to actions taken by ERCOT and PUCT during the Texas winter storm that contributed to the Just Energy Entities seeking creditor protection" and that, as part of the U.S. Adversary Proceeding, "the Plaintiffs seek to avoid obligations owing and claw back payments made to ERCOT pursuant to section 36.1 of the CCAA". The ERCOT Adversary Proceedings includes "[t]he Plaintiffs challeng[ing] US\$274 million in payments made to ERCOT in the period during and after the Texas winter storm event". The Monitor did not address the potential fiscal impact of success in the ERCOT Adversary Proceedings on Just Energy's restructuring. A copy of the Monitor's Ninth Report is attached as **Exhibit "AA"**.

40. In the affidavit of Michael Carter sworn May 12, 2022 submitted by Just Energy in support of this motion, no mention was made of the anticipated \$147.5 million USD payment as a result

of HB 4492, the status of the ERCOT Adversary Proceedings, or of how either would be addressed in the plan of compromise Just Energy proposed.

41. In its Tenth Report dated May 18, 2022, the Monitor did not provide an update on the anticipated \$147.5 million USD payment as a result of HB 4492, nor did it provide an update on the ERCOT Adversary Proceedings. In the narrative of the invoices filed as part of the Tenth Report, the Monitor disclosed that since April 18, 2022:

- (a) The Monitor "research[ed] ERCOT['s] operating assumptions";
- (b) The Monitor "research[ed] ERCOT questions"
- (c) The Monitor's counsel "review[ed] emails and [a] letter from counsel for ERCOT";
- (d) The Monitor's counsel discussed the "status of matter and ERCOT response" with, among other external parties, Just Energy's insolvency counsel;
- (e) The Monitor's counsel discussed the "position of ERCOT" with an internal team and external counsel;
- (f) The Monitor's counsel conducted a "review of ERCOT submissions"; and
- (g) The Monitor's U.S. counsel reviewed and addressed issues relating to "ERCOT adversary", including having discussions regarding same with Monitor's Canadian counsel and Just Energy's insolvency counsel.

42. A copy of the Monitor's Tenth Report (without appendices) is attached as **Exhibit "BB"**.

43. As of the date of this affidavit, the status and timing of the anticipated \$147.5 million USD payment from ERCOT is unclear and Just Energy's nor the Monitor's assessment of the likelihood of success or recovery in the ERCOT Adversary Proceedings have been provided.

E. Just Energy's Refusal to Disclose Documents

44. In its September 21, 2021 letter to Just Energy's insolvency counsel and the Monitor's counsel (**Exhibit "L"**), Class Counsel requested copies of any applicable insurance policies for

Just Energy's directors responsive to a claim by Class Members against those directors for wages owing pursuant to the ESA, OBCA, and/or the CBCA.

45. By letter dated September 27, 2021, Just Energy's counsel responded by email and refused to provide the requested documents. A copy of the letter dated September 27, 2021 is attached as **Exhibit "CC"**.

46. By letter dated October 8, 2021, Class Counsel renewed its request for the documents. A copy of the letter dated October 8, 2021 is attached as **Exhibit "DD"**.

47. I am advised by David Rosenfeld that at no time thereafter has Just Energy or the Monitor provided copies of any insurance policies for Just Energy's directors that would be responsive to a claim by Class Members against Just Energy's directors.

48. I make this affidavit in response to Just Energy's motion for a meeting order.

AFFIRMED BEFORE ME: in person by video conference

by Vlad Andrei Calina at the City of Toronto, in the Province of Ontario, before me on May 26, 2022, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits (*or as may be*)



Signature of Commissioner (*or as may be*)

David Rosenfeld



Signature of Deponent

*THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Court FileNo.CV-15-52749300 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

KIA KORDESTANI Haidar Omarali

Plaintiff

-and-

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

THE ORDER OF
 L'ORDONNANCE DU
 DATED / FAIT LE

AMENDED THIS
 MODIFIE CE

RULE 1A REGLE 26.02 (1)
 PURSUANT TO
 CONFORMEMENT A

BETWEEN :
 Justice Belobaba
 2017/13/15

JUSTICE BELOBABA
 JUGE EN CHEF
 COUR SUPERIEURE DE JUSTICE

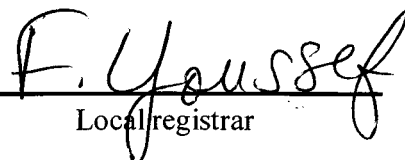
AGOSTINIA
 SUPERIOR COURT OF JUSTICE
 COUR SUPERIEURE DE JUSTICE

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 4, 2015

Issued by


Local registrar

Address of court office 393 University Avenue,
10th Floor,
Toronto, ON

TO: JUST ENERGY CORP.
2630-100 King St. West
Toronto, ON M5X 1E1

AND TO: JUST ENERGY GROUP INC.
2630-100 King St. West
Toronto, ON M5X 1E1

AND TO: JUST ENERGY ONTARIO L.P.
2630-100 King St. West
Toronto, ON M5X 1E1

CLAIM

1. The Plaintiff claims:
 - (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class (defined below);
 - (b) \$100 million in ~~general~~ damages for the Class, or such other sum as this Honourable Court deems just;
 - (c) a declaration that the provisions of the *Employment Standards Act, 2000* (“*ESA*”), as applicable, are express or implied terms of the contracts of employment of the Class Members (defined below);
 - (d) a declaration that the Class Members are employees of the Defendants who are operating as a common employer, for the purposes of the *ESA*;
 - (e) a declaration that the Defendants violated the terms of the *ESA*, breached the Class Members’ contracts of employment and duty of good faith owed to the Class Members, and/or breached the duty of care owed to the Class Members by:
 - (i) failing to ensure that Class Members were properly classified as employees;
 - (ii) failing to advise class members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *ESA* (the “Minimum Wage”);
 - (iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
 - (iv) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the *ESA* (the “Overtime Threshold”);

- (v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold (“Overtime Pay”);
 - (vi) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
 - (vii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* (“Vacation Pay”);
 - (viii) failing to compensate Class Members for Vacation Pay;
 - (ix) failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the “Public Holiday and Premium Pay”); and
 - (x) failing to compensate Class Members for Public Holiday and Premium Pay.
- (f) an interlocutory and a final mandatory order for specific performance directing that the Defendants comply with the *ESA* and/or the contracts of employment with the Class Members, in particular, to:
- (i) ensure that Class Members are properly classified as employees;
 - (ii) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay;
 - (iii) ensure that the Class Members’ hours of work are monitored and accurately recorded; and

- (iv) ensure that Class Members are appropriately compensated at a rate equal to or above the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.
- (g) a declaration that the provisions of any applicable independent contractor agreement which may purport to exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay are void and unenforceable;
- (h) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (i) a declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (j) a declaration that the Defendants are liable, and must reimburse Class Members, for any *Canada Pensions Plan* (“CPP”) or *Employment Insurance Act* (“EI”) contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (k) a declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of compensating class members at rates below the Minimum Wage, without paying Overtime Pay, without paying Vacation Pay and without paying Public Holiday and Premium Pay, and an order requiring the Defendants to disgorge to the Class Members all amounts withheld by them in respect of such unpaid hours and entitlements;
- (l) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;

- (m) an order directing the Defendant to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;
- (n) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
- (o) punitive, aggravated and exemplary damages in the amount of \$10 million, or such other amount as this Honourable Court deems just;
- (p) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (q) the costs of administering the plan of distribution of the recovery in this action; and
- (r) such further and other relief as this Honourable Court may deem just.

THE PARTIES

~~2. The Plaintiff, Kia Kordestani (“Kordestani”), resides in Ontario. He was a “Sales Agent” retained by one or more of the Defendants (“Just Energy”) from June 2012 until June 2013. Kordestani worked as a Sales Agent at the Ottawa sales office of Just Energy.~~

2. The Plaintiff, Haidar Omarali (“Omarali”), resides in Ontario. He was a “Sales Agent” retained by Just Energy starting in August 2012 until September 2013. Omarali worked as a Sales Agent at the Dundas sales office of Just Energy.

3. Just Energy is one of the largest independent energy retailers in North America, and serves 21 markets across North America (6 Canadian provinces and 15 U.S. states) and the U.K. market, providing energy products to approximately 2 million homes and businesses. It annually generates revenues of hundreds of millions of dollars.

4. Within Ontario, Just Energy has 12 regional offices and approximately 130 Sales Agents at any given time. Sales Agents are employed by Just Energy to market Just Energy’s fixed price energy contracts and other energy products related to the supply of natural gas and

electricity in Ontario. Sales Agents market Just Energy contracts at designated times and at designated locations to residential and commercial customers by traveling door-to-door to the residences of energy consumers and potential customers.

5. The Defendants carry on business in common in respect of the hiring, training, supervision and control of the Class Members. The Defendants are headquartered at the same address and represent to the public and to Sales Agents as a single entity.

6. The marketing activities of Just Energy, and the activities of the Sales Agents, are provincially regulated and therefore governed by the *ESA*.

THE CLASS

7. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992* on his own behalf and on behalf of the following class of persons:

“Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.”

(the “Class” or “Class Members”)

EMPLOYMENT RELATIONSHIP

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Just Energy creates an employment relationship with Just Energy. In particular:

- (a) Just Energy trains all the Class Members in their marketing duties;
- (b) Class Members are told how they can market Just Energy contracts, in the form of sales scripts, booklets, manuals and sales presentations;
- (c) Class Members were told where and when they can market Just Energy contracts;
- (d) Class Members are taken to specific locations and areas in which they could market door-to-door contracts and require permission to change any location;

- (e) Class Members all must wear Just Energy clothing and represent as working for Just Energy;
- (f) Class Members must use the tools of Just Energy in the form of brochures, contracts, informational sheets and mandatory Just Energy branded clothing;
- (g) All prices and Sales Agent commissions are fixed by Just Energy;
- (h) Class Members do not complete contract renewals or the finalization and confirmation of any contract with potential customers, which is all done directly by Just Energy through a Just Energy call centre after the Class Members' home marketing;
- (i) Just Energy maintains sole discretion whether to accept or reject any potential contract generated by the Class Members;
- (j) All potential contracts generated by Class Members must be reported to Just Energy on a daily basis;
- (k) Only Just Energy handles customer complaints about the Class Members;
- (l) Just Energy assumes responsibility for alleged misconduct of the Class Members while marketing of Just Energy contracts to the public;
- (m) As a result of the work demands and explicit working restrictions placed on Class Members by Just Energy, Class Members cannot work for any other business while also working for Just Energy;
- (n) Class Members cannot sub-contract or independently employ other individuals to market Just Energy contracts on the Class Members' behalf;
- (o) The contracts generated by the Class Members form a substantial amount of Just Energy's revenue; and
- (p) Class Members are paid directly by Just Energy.

ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT

9. The provisions of the *ESA* are implied terms, in fact or by law, as minimum terms of the contracts of employment of the Class Members.

10. Therefore, the contracts of employment of the Class Members expressly or impliedly provide that Class Members shall be compensated

- (a) at a rate equal to, or greater than, the Minimum Wage;
- (b) with Overtime Pay for hours worked in excess of the Overtime Threshold;
- (c) with Vacation Pay on all amounts paid; and
- (d) with Public Holiday and Premium Pay.

CONTRACTUAL DUTIES OWED TO CLASS MEMBERS

11. As low skilled employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at, or above, the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. Just Energy is/was in a position of power and direct control over the Class Members and the Class members were in a vulnerable position *vis-a-vis* the Defendants.

12. The Defendants owe contractual duties to the Class Members, including its contractual duty of good faith, all of which required, and continue to require, the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay and Vacation Pay;

- (c) ensure that the Class Members' hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

DUTY OF CARE

13. Just Energy owed the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Just Energy retaining the Class Members to perform marketing services on Just Energy's behalf.

14. Just Energy owed the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts.

15. The Defendants' duty of care required the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) ensure that the Class Members hours of work are monitored and accurately recorded; and
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.

RESPONSIBILITIES OF SALES AGENT AND TREATMENT BY JUST ENERGY

16. ~~From June 2012 until June 2013, Kordestani worked for Just Energy as a Sales Agent out of a sales office located in Ottawa, Ontario. From August 2012 until September 2013,~~ Omarali worked for Just Energy as a Sales Agent out of the Dundas sales office.

17. ~~Kordestani's~~ Omarali's duties and responsibilities as a Sales Agent included:

- (a) attending the Just Energy regional sales office between 9:00 a.m. and 9:30 a.m. to start work;
- (b) collecting blank contracts and promotional material at the regional sales office;
- (c) from approximately 9:30 a.m. to 12:00 p.m. each day, attend a meeting with other Sales Agents and the Just Energy Regional Director at the regional sales office to review sales statistics, sales scripts, sales tactics, sales role playing, marketing locations and sales targets for the day;
- (d) being assigned to a crew coordinator by the Regional Director and taken by the crew coordinator, by van, to a location with other Sales Agents to begin door-to-door marketing of Just Energy contracts;
- (e) between approximately 1:00 p.m. to 9:00 p.m., market Just Energy contracts door-to-door in a designated area using materials provided by Just Energy;
- (f) report all potential contracts to the regional sales office and Regional Director;
- (g) obey the direction of the Regional Director if directed to change marketing locations and report to the Regional Director on present locations; and
- (h) conclude the day at 9:00 p.m. by reporting to the assigned crew coordinator, who picked him up from his assigned location and dropped him back off at the regional sales office.

18. The Defendants required ~~Kordestani~~ Omarali to work between 60-72 hours per week without receiving the Minimum Wage, contrary to his contractual terms.

19. ~~Kordestani~~ Omarali relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that he was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. At the time, ~~Kordestani~~ Omarali relied on the Defendants to properly classify him regarding his status as an employee and his entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay and was misled by the Defendants that he was not an employee of the Defendants.

20. ~~Kordestani~~ Omarali did not become aware that he was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay because the Defendants had continually misrepresented to him his actual eligibility and entitlement to such pay.

21. ~~Kordestani's~~ Omarali's duties are consistent with the duties of all Sales Agents in the Class and the operations of Just Energy and the controls imposed by Just Energy on the Sales Agents.

22. The Defendants required explicitly, and/or implicitly, that ~~Kordestani~~ Omarali and the other Class Members work exclusively for Just Energy.

23. At all material times, ~~Kordestani,~~ Omarali and the other Class Members were explicitly directed how, where and when they could perform marketing duties for Just Energy.

24. The Defendants required that all Sales Agents attend at the regional sales office to begin work between 9:00 a.m. and 9:30 a.m. and perform marketing between 1:00 p.m. to 9:00 p.m., 5-6 days per week.

25. The Defendants required that Sales Agents travel to other cities during "Push Weeks" to market Just Energy contracts in new locations and that Sales Agents cover all costs related to travel, food and accommodation during those "Push Weeks".

26. As a Sales Agent, ~~Kordestani,~~ Omarali and all other Class Members worked between 60-72 hours per week including weekends. The Defendants were aware of, and encouraged ~~Kordestani,~~ Omarali and all other Class Members, to work those hours in excess of the

Overtime Threshold, which were necessary in order to comply with the enforced hours and structure of a Sales Agent workday. The Defendants required and/or permitted ~~Kordestani~~, Omarali and the other Class Members, to work hours in excess of the Overtime Threshold and failed or refused to provide them with Overtime Pay.

27. At all material times, ~~Kordestani~~, Omarali and the other Class Members were explicitly and incorrectly informed they were not employees of Just Energy.

28. The Defendants required ~~Kordestani~~, Omarali and the other Class Members to work hours in excess of the Overtime Threshold without Overtime Pay, contrary to their contractual terms.

29. The Defendants failed to compensate ~~Kordestani~~, Omarali and the other Class Members for Vacation Pay, contrary to their contractual terms.

30. The Defendants failed to compensate ~~Kordestani~~, Omarali and the other Class Members for Public Holiday and Premium Pay, contrary to their contractual terms.

SYSTEMIC CLASSIFICATION AS “INDEPENDENT CONTRACTORS”

31. The Defendants systemically classified all Sales Agents as “independent contractors” and required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay, under the misrepresentation from Just Energy that Sales Agents were independent contractors.

32. The Defendants were aware that the Class Members relied on the Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.

33. The Defendants exerted pervasive pressure on Class Members to work hours in excess of the Overtime Threshold. If Class Members did not work the overtime as required to

complete their employment responsibilities, such Class Members were terminated because the Defendants would “cancel” their “independent contractor” agreement.

SYSTEMIC BREACH OF THE *ESA*

34. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by :

- (a) failing to ensure that Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) failing to ensure that the Class Members’ hours of work were monitored and accurately recorded;
- (d) requiring and/or permitting the Class Members to work hours for which it failed to compensate at a rate equal to, or above, the Minimum Wage;
- (e) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that Class Members were compensated for Overtime Pay;
- (f) failing to compensate Class Members for Vacation Pay; and
- (g) failing to compensate Class Member for Public Holiday and Premium Pay.

35. Just Energy’s misclassification of Sales Agents as purported independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay to Class Members is in violation of the *ESA* and is unlawful.

36. To the extent that any contracts purport to designate the Class Members as independent contractors and exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay or any other minimum requirement of the *ESA*, such contracts and or provisions are void and unenforceable.

SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH

37. The Defendant systemically breached the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

38. There was no legitimate basis for the Defendants' arbitrary designation of the Class Members as independent contractors and ineligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, which was contrary to the employees' express or implied terms of contract with the Defendants. Such classification and exclusion is contrary to the terms of the *ESA*, which are incorporated as express or implied terms of the contracts.

39. Such breaches are ongoing and continuous in respect of the Class Members since at least 2012.

SYSTEMIC NEGLIGENCE

40. Just Energy owed ~~Kordestani~~, Omarali and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to market Just Energy contracts. Just Energy systemically breached that duty by:

- (a) improperly and arbitrarily misclassifying the Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

41. As a result of Just Energy's negligence in mischaracterizing the relationship between Just Energy and the Class Members, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors, all of which were reasonably foreseeable to Just Energy.

UNJUST ENRICHMENT

42. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

43. The Class Members have suffered a corresponding deprivation, in the form of the Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay that is owed to them.

44. There is no juristic reason for the Defendants' unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from their contractual and statutory entitlements is unlawful.

45. The Defendants' unjust enrichment has been continuous and ongoing since at least 2013.

DAMAGES

46. As a result of the Defendants' breaches of the *ESA*, breaches of contract, negligence, and/or unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors.

47. Furthermore, the Defendants' arbitrary and incorrect misclassification of the Class Members as independent contractors and exclusion from Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, coupled with the Defendants' requirement that the Class Members work hours in excess the Overtime Threshold, was high handed and callous. The Defendants were in a position of power over low skilled and vulnerable employees and owed them a duty of good faith, which the Defendants flagrantly breached to increase its profits at the expense of the Class Members. Such conduct warrants an award of punitive damages.

48. Moreover, the Defendants' arbitrary and incorrect misclassification of the Class Members as independent contractors caused the Class Members to erroneously pay the employer component of CPP and/or EI contributions on their income. Such employer contributions ought to have been made by Just Energy on their behalves, instead the Class Members paid those contributions directly. The Defendants' misclassification thereby caused compensable damages to the Class Members for which sufficient reimbursement should be awarded.

49. The Plaintiff pleads and relies on upon the following statutes and regulations:

- (a) *Employment Standards Act, 2000*, S.O. 2000, c. 41;
- (b) *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

- (c) Canada Pension Plan, R.S.C. 1985, c. C-8; and
 - (d) Employment Insurance Act, S.C. 1996, c. 23;
50. The Plaintiff proposes that this action be tried in Toronto.

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DEFENDANTS

Court File No: CV-15-52749300CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at **TORONTO**

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

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*THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Court File No.: CV-15-527493-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

Haidar Omarali

Plaintiff

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**FACTUM OF THE MOVING PLAINTIFF
(Summary Judgment Motion Returnable June 11-13, 2019)**

May 10, 2019

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Court File No.: CV-15-527493-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

Haidar Omarali

Plaintiff

- and -

**JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**FACTUM OF THE MOVING PLAINTIFF
(Summary Judgment Motion Returnable June 11-13, 2019)**

PART I - OVERVIEW

1. The proposition that 8,000 low-skilled workers without any previous marketing experience, who can only market one set of products, and who are directed on how, when and where to market such products, are operating 8,000 individual "independent" businesses and excluded from the minimum protections of the *Employment Standards Act, 2000* ("ESA"), is not fathomable.

2. This is what the Just Energy¹ has been asserting to the army of 8,000 vulnerable, low-skilled workers, of limited means, it sends out to market its products. As a result Just Energy has avoided the basic and decent responsibility of paying its workers a minimum wage and other mandated minimum requirements.

¹ Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. together referred to herein as Just Energy.

3. The unilateral classification as "independent contractors" by Just Energy is contrary to the true nature of the relationship. The fundamental question to be determined in this case is: whose business is it? What is clear from the true nature of the relationship is that the business does not belong individually to 8,000 class members, it belongs to Just Energy.

4. In particular, Just Energy's sales structure and organization is entirely inconsistent with the existence of 8,000 independent "sales" businesses as Just Energy:

- (a) designed and implements a consistent hierarchical structure of regional offices;
- (b) centrally recruits class members for all regional offices;
- (c) provides uniform training and direction on how to market for Just Energy;
- (d) provides direction on when and where to market;
- (e) transports class members to their marketing locations;
- (f) provides direction on what to wear while marketing;
- (g) imposes a comprehensive compliance and discipline system on the class;
- (h) mandates that class members can only market Just Energy products; and
- (i) exclusively provides all the tools for class members' marketing.

5. As class members have no ability to change the price of any of Just Energy's products and are only paid a fixed commission, the class has no chance to profit other than being paid for their work. Finally, as Just Energy's business is the sale of the products marketed by the class, the class' work is not a secondary or complimentary component of Just Energy's business – it is Just Energy's business.

6. In these circumstances, the 8,000 members of the class cannot be said to be operating independent "sales" businesses. They are truly employees of Just Energy entitled to the minimum wage, overtime and other minimum requirements of the *ESA*, and otherwise. The fundamental

question of employment status should be determined in favour of the class and summary judgment should be granted on all of the certified common issues following that determination.

PART II - STATEMENT OF FACTS

A. Just Energy's business

7. Just Energy is one of the largest independent energy retailers in North America, operating in Canada, the United States and also the United Kingdom.² Just Energy is a retailer of gas and electricity contracts. Just Energy does not produce or distribute gas and electricity - rather it buys and resells it to consumers and profits on the difference.³ Therefore Just Energy's business is in the gas and electricity contracts it enters into with consumers.⁴

B. Just Energy's door-to-door sales channel

8. To get customers to sign these contracts, Just Energy sends an army of marketers door-to-door seeking to get customers to sign Just Energy contracts – called "Sales Agents". Between 2012 and 2016, Just Energy sent over 8,000 Sales Agents to knock on doors in Ontario.⁵

² Affidavit of Richard Teixeira, sworn January 10, 2019 ["**Teixeira Affidavit**"], para. 5, Responding Motion Record ("**Responding MR**"), Tab 1A, p. 45. Just Energy Group Inc. is a publicly traded corporation with its headquarters in Ontario. Just Energy Corp. and Just Energy Ontario LP are entities wholly owned by Just Energy Group Inc. The Defendants carry on business in common, are headquarter in the same place and are represented to the public and the class as one entity: Just Energy. Throughout this factum the Defendants shall be referred to collectively as "Just Energy". At no time have the Defendants taken the position that any of the named Defendants are not liable or are improperly named.

³ Excerpts from Transcript of Ravi Maharaj dated January 24, 2019 ("**JE Discovery Transcripts, January 24, 2018**"), Q. 1069-1072, Exhibit "15" to the Affidavit of Michelle Alexander sworn September 5, 2018 ("**Alexander Affidavit**"), Plaintiff's Motion Record ("**Plaintiff's MR**"), Vol. 2, Tab H15 at p. 907-908.

⁴ JE Discovery Transcripts, January 24, 2018, Q. 1058-1064 Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15 at p. 905-906.

⁵ Alexander Affidavit, para. 5, Plaintiff's MR, Vol. 1, Tab H, p. 91; Email exchange between David Rosenfeld and Paul Martin dated August 2019, Exhibit "20" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, Tab H 20, p. 1539.

9. This door-to-door marketing generates substantial revenue for Just Energy: In 2009, door-to-door marketing made up approximately 95% of Just Energy's sales revenue, in 2016 it was 21%.⁶

i. Hierarchical structure

10. To organize this army of marketers, Just Energy set up a hierarchical sales division.

11. Just Energy owns or leases regional offices.⁷ The regional offices have Just Energy signs on the front, Just Energy signs inside, and maintain only Just Energy promotional materials.⁸ These offices are partly staffed by Just Energy "employees" (as deemed by Just Energy) and run by "independent contractors" called "National" or "Regional Distributors."⁹ Regional Distributors operate the Just Energy offices and manage the "independent contractors" at that office on behalf of Just Energy¹⁰ including "Crew Coordinators" and Sales Agents. Crew Coordinators help supervise Sales Agents and take direction from Regional Distributors.¹¹ All

⁶ Exhibit "A" to the Teixeira Affidavit, sworn January 10, 2019, para. 8, Responding MR, Tab 1A, p. 46.

⁷ JE Discovery Transcripts, January 24, 2018, Q. 269, 270, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, pp. 797.

⁸ JE Discovery Transcripts, January 24, 2018, Q. 275-284, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 798, 789; Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381.

⁹ JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15 at pp. 800, 805; Cross-Examination Transcript of Brian Marsellus ("**Marsellus Cross**"), dated March 6, 2019, Q. 14-16, 27-39 Responding MR, Tab 1, pp. 5, 7-9.

¹⁰ Marsellus Cross, Q.27-39, Transcript Brief, p. 7-9; Teixeira Cross, Q. 221-223, Transcript Brief, Tab 2, pp 96-97; Affidavit of Katlyn Schwantz sworn August 29, 2018 ("**Schwantz Affidavit**") at paras.9-11, 15, Plaintiff's MR, Vol. 1, Tab B, pp. 14-15; Affidavit of Jennifer Borg sworn August 29, 2018 ("**Borg Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab C, pp. 56-58; Affidavit of Jamie Acton sworn August 29, 2018 ("**Acton Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Affidavit of Roland Lavigne sworn August 30, 2018 ("**Lavigne Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab E, pp. 70-71; Affidavit of Behram Nemati sworn August 30, 2018 ("**Nemati Affidavit**") at para. 14, Plaintiff's MR, Vol. 1, Tab F, pp. 77-78; Cross-Examination Transcript of Katlyn Schwantz Cross, March 21, 2019 ("**Schwantz Cross**"), Q. 97, Transcript Brief, pp. 178-179; Cross-Examination Transcript of Jennifer Borg, dated March 28, 2019 ("**Borg Cross**"), Q. 510-511, Transcript Brief, p. 713.

¹¹ Marsellus Cross, Q. 27-39, Responding MR, Tab 1, p. 7-9; JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, 359, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 800, 805, 817.

Sales Agents must operate out of a Just Energy office.¹²

12. Just Energy imposes a commission-based compensation structure for this sales channel:
- (a) Sales Agents only get paid fixed commission for contracts they originate;
 - (b) Crew Coordinators get paid on commission on contracts they originate and receive commissions on contracts originated by Sales Agents they supervise; and
 - (c) National/Regional Distributors receive commissions on contracts originated by all Sales Agents and Crew Coordinators out of their offices.¹³

ii. Uniform recruitment, training and orientation dictated by Just Energy

13. All Sales Agent are centrally recruited by Just Energy.¹⁴ Just Energy has employees (as deemed by Just Energy) whose job it is to recruit Sales Agents on a daily basis.¹⁵ Those responding speak to Just Energy and are directed to a particular Just Energy office.¹⁶ Just Energy recruiters at each office (employees as deemed by Just Energy) conduct "interviews" and sign the Independent Contractor Agreements ("ICA") with the Sales Agents.¹⁷

14. The orientation process is standard and dictated by Just Energy.¹⁸ After the ICA, Regional Distributors or recruiters administer Just Energy's training through its 5-module training program. Sales Agents are also provided with an Ontario Energy Board ("OEB")

¹² JE Discovery Transcripts, January 24, 2018, Q. 257, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 794.

¹³ Teixeira Cross, Q. 66-70, Transcript Brief, p. 55-56; Marsellus Cross, Q. 52-53, Transcript Brief, p. 11.

¹⁴ JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763.

¹⁵ JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763; Teixeira Affidavit, paras. 29-31, Responding MR, Tab 1, pp. 9-10.

¹⁶ Teixeira Affidavit, paras. 32-33, Responding MR, Tab 1, p. 10.

¹⁷ JE Discovery Transcripts, January 24, 2018, Q. 387, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 822; Teixeira Affidavit, paras. 33-34, 38-39, Responding MR, Tab 1, pp. 10-12.

¹⁸ Just Energy Ontario LP Door to Door Recruiting and Orientation Process, Exhibit "35" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, Tab H35, p. 2237; Ontario OEB Module/Orientation Process, Exhibit "79" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H79, pp. 2813-2815; Guidebook – Independent Contractor Orientation – Ontario – Part I, Exhibit "81" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H81, pp. 2820-2934; Guidebook – Independent Contractor Orientation – Ontario – Part 3, Exhibit "82" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H82, pp. 2936-2967.

training module and have to pass an OEB examination. Then Sales Agents are provided with their badge and sent into the field for more direct training and to market for Just Energy.¹⁹

15. The orientation and training process takes 1-2 days and is undertaken at every Just Energy office for every Sales Agent.²⁰

16. This centralized training directs Sales Agents on how to do their job for Just Energy including: when and how long to market; how to dress; how to approach customers; how to explain Just Energy products; how to handle questions; and how to explain and sign a contract.²¹

iii. The "Independent Contractor" Agreement

17. All Sales Agents are required to sign the ICA.²² Sales Agents are not permitted to make changes to the ICA or negotiate terms, and signing the agreement is mandatory to start the job.²³

18. The ICA provided as follows:

- (a) Sales Agents were to "market" and "solicit" contracts for the benefit of Just Energy LP;²⁴
- (b) Sales Agents had to agree to abide by the terms and conditions delivered

¹⁹ Teixeira Affidavit, paras. 41-60, Responding MR, Tab 1, pp. 12-17; Schwantz Affidavit at paras. 4-8, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab E, p. 69; Nemati Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab F, pp. 76.

²⁰ JE Discovery Transcripts, January 24, 2018, Q. 1047, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 904; Schwantz Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab D, p. 62.

²¹ Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2540, 2542; Training Module 5, Exhibit "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H69 at p. 2575, 2577, 2578.

²² JE Discovery Transcripts, January 24, 2018, Q. 79-82, 387, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 136, at pp. 765-766, 822; Teixeira Affidavit, paras. 29-31, Responding MR, Tab 1, pp. 9-10.

²³ JE Discovery Transcripts, January 24, 2018, Q. 745, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, p. 870.

²⁴ Independent Contractor Agreement ("IC Agreement"), (Preamble and para. 1), – Answers arising from discovery related documents ("Responses to Undertakings"), Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

by Just Energy;²⁵

- (c) Sales Agents were compensated by way of a commission schedule;²⁶
- (d) Just Energy rather than Sales Agents had an unfettered and unilateral right to amend the contract at any time by posting the amended contract at the office where the Sales Agent's commissions are received;²⁷
- (e) Sales Agents were forbidden from working with any other company that competes with Just Energy during the course of the contract and for three weeks following termination;²⁸
- (f) Just Energy could compel a contractor to cease marketing and undergo retraining if concerns are raised regarding their performance.²⁹

iv. Direction on when, where and how to work

19. Thereafter Just Energy's direction on how Sales Agents perform their work continues:

- (a) daily morning meetings are held where best practices are explained;³⁰
- (b) daily role playing is conducted before heading to the field;³¹
- (c) a "Sales Binder" provides direction on how to perform their work, including sales scripts and objection handling scripts;³²

²⁵ IC Agreement (Preamble), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

²⁶ IC Agreement (Independent Contractor Commission Schedule for Effective Contracts) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

²⁷ IC Agreement (at para. 1) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

²⁸ IC Agreement (at paras. 7-8) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, pp. 1315-1316.

²⁹ IC Agreement (at para. 9) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p.

³⁰ Teixeira Affidavit, paras. 62-63, Responding MR Tab 1, p. 18; Affidavit of Brian Marsellus sworn January 11, 2019 ("**Marsellus Affidavit**") at paras. 45-47, Responding MR Tab 2, p. 854; Schwantz Affidavit at para. 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, pp. 78.

³¹ Teixeira Affidavit, paras. 62-63, Responding MR, Tab 1, p. 18; Marsellus Affidavit, paras. 45-47, Responding MR, Tab 2, p. 854; Schwantz Affidavit at para. 14 and 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 77; Nemati Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 84.

³² Including Marketing in Hot and Cold Weather Conditions, customer interaction scripts, objection handling scripts how to interact with disabled customers, and acceptable marketing practices: JE Discovery Transcripts, January 24, 2018, Q. 536-539, 542, 552-553, 560-563, 591-593, 607-609, 620, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at p. 841-842, 844, 846-847, 851-852, 854-855, 857; Marketing in Hot and Cold Weather Conditions, Exhibit "41" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 41, p. 2319; The

- (d) job shadowing is conducted in the field;³³ and
- (e) supervision and direction is provided by Crew Coordinators in the field.³⁴

20. Just Energy also directs Sales Agents on when and where they should market. Marketing locations are determined by the Regional Distributors and Crew Coordinators during daily morning meetings.³⁵ Sales Agents are then driven to the field in vans by Crew Coordinators.³⁶ iPads are used to monitor and track Sales Agents in real time and then direct resources accordingly.³⁷ Crew Coordinators or Sales Agents are threatened with termination if they don't

Customer Interaction, Exhibit "42" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab 42, p. 2324; Objection Handling Scripts – Ontario (JECF), Exhibit "44" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 47, p. 2364; What you need while marketing, Exhibit "46" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 46, p. 2362; Interacting with Customers with Disabilities, Exhibit "47" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 47, p. 2364; Acceptable Marketing Practice: Code of Compliance - Ontario, Exhibit "48" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 48, p. 2366.

³³ Teixeira Affidavit, para. 54, Responding MR, Tab 1, p. 16.

³⁴ Schwantz Affidavit at para. 12 and 15(j), Plaintiff's MR, Vol. 1, Tab B, p. 13, 15; Borg Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab C, p. 56, 57; Acton Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab D, p. 63, 64; Lavigne Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab E, p. 77, 78; Nemati Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab F, p. 84, 85.

³⁵ Locations are determined by the use of maps, do not solicit lists, availability of installation technicians, discussions with other crew coordinators. Marsellus Affidavit, paras. 61-65, Responding MR, Tab 2, p. 858-859; Schwantz Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 78; Cross-Examination Transcript of Bahram Nemati dated March 22, 2019 ("**Nemati Cross**"), Q. 15, 203, Transcript Brief, pp. 353, 402; Schwantz Cross, Q. 271-272, 669, Transcript Brief, pp. 221-222, 334.

³⁶ Teixeira Affidavit, para. 88, Responding MR Tab 1, p. 24; Affidavit of Daniel Gadoua sworn January 11, 2019 ("**Gadoua Affidavit**") at para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28; Schwantz Cross, Q. 128, Transcript Brief, Tab 4, pp. 185-186; Cross-Examination Transcript of Roland Lavigne, dated March 22, 2019 ("**Lavigne Cross**"), Q. 194-199, Transcript Brief, Tab 7, pp. 459-460; Cross-Examination Transcript of Jamie Acton, dated March 28, 2019 ("**Acton Cross**"), Q. 163-165, Transcript Brief, Tab 7, pp. 553-554; Borg Cross, Q. 368-374, 459-462, Transcript Brief, Tab 8, pp. 682-683, 700-701.

³⁷ Schwantz Cross, Q. 544-55, Transcript Brief, Tab 4, p. 299; Just Energy Mobile Presentation, Exhibit "118" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H118, pp. 4654-4700; Live Energy Application – iPad, Exhibit "130" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H130, pp. 4821-4839; Just Energy Mobile Management Portal – Presentation, Exhibit "122" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H122, pp. 4708-4735.

market in the approved areas.³⁸

21. In addition, Just Energy has an extensive system to monitor and track Sales Agents' performance and discipline non-compliance including: a dedicated department that monitors Sales Agents' compliance with their work requirements;³⁹ and a "Compliance Matrix" directing the discipline to be imposed for various conduct, including suspensions, fines and termination.⁴⁰

v. Exclusivity to Just Energy

22. Just Energy mandates in its ICAs that Sales Agents cannot market for other businesses "that compete directly with the business carried on by Just Energy corp. or its affiliates during the term of the Agreement and for a period of three (3) weeks following the termination of this Agreement".⁴¹ In addition, given the extensive control exerted over Sales Agents, and the time commitment of six days per week, it is not possible for Sales Agents to work anywhere else.⁴²

23. Sales Agents have no contemporaneous or ongoing relationship with customers, the relationship is exclusive to Just Energy.⁴³ The business at issue is Just Energy's business.

³⁸ Schwantz Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at paras. 18, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab F, p. 79.

³⁹ Just Energy Ontario L.P.'s Response to Ontario Energy Board Staff Supplementary Information Request ("JE Response to OEB Supp. Request"), Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, pp. 3321-3322.

⁴⁰ Compliance Matrix, Exhibit "101" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 101, pp. 3488-3491.

⁴¹ IC Agreement (para. 6) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1315.

⁴² Schwantz Affidavit at para. 17 and 21, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab D, pp. 65; Lavigne Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 36, Transcript Brief, Tab 4, p. 164.

⁴³ All energy contracts are made between Just Energy and the consumer, Just Energy performs finalization and confirmation of all contracts, Just Energy has sole discretion on whether to accept or reject a potential contract; Just Energy handles customer complaints, Just Energy addresses renewals of consumer contracts and when a Sales Agent

vi. Just Energy provides the tools of work

24. Just Energy creates and provides all the "tools", without which the Sales Agents cannot complete their work for Just Energy, including contracts, marketing materials, identification badges, and clothing.⁴⁴

vii. Compensation of Sales Agents

25. Just Energy only provides Sales Agents with a fixed commission for contracts finalized between Just Energy and customers. The commission schedule applicable to all Sales Agents is dictated by Just Energy and all payments are from Just Energy directly.⁴⁵ Just Energy can unilaterally change the commission schedule for all Sales Agents in their sole discretion without advance notice.⁴⁶ Similarly, no Sales Agent has control over the structure of commissions or how they may be charged through to consumers.⁴⁷

26. There are three (3) basic commissions paid to Sales Agents set out in all ICAs: "Initial" commission;⁴⁸ "Reconciliation" commission;⁴⁹ and a "Residual" commission.⁵⁰ When a Sales

leaves Just Energy they get no residual commission from that consumer contract. IC Agreement (Preamble, para. 1) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1313.

⁴⁴ Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381; Teixeira Affidavit, para 104, Responding MR Tab 1, p. 29; Schwantz Affidavit at para. 15(d), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab F, p. 78; Schwantz Cross, Q. 355-356, Transcript Brief, Tab 4, p. 246; Teixeira Affidavit, para 106, Responding MR, Tab 1, p. 29; The Customer Interaction, Exhibit "50" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 50, p. 2373.

⁴⁵ IC Agreement (Independent Contractor Commission Schedule for Effective Contracts) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

⁴⁶ IC Agreement (para. 4) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1314.

⁴⁷ IC Agreement (para. 4) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1314; IC Agreement (Independent Contractor Commission Schedule for Effective Contracts) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

⁴⁸ This is the commission paid for contracts that are not canceled or deemed not to be "Effective" by Just Energy. IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 1) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1319.

Agent stops working for Just Energy they do not receive Residual payments in respect of any contracts which were a product of their marketing.⁵¹

27. Just Energy also unilaterally "claw backs" Sales Agents' commissions when a consumer cancels or Just Energy deems the contract to be not "Effective". Claw backs can result in a Sales Agent owing money to Just Energy if commissions are less than the claw back for that period.⁵²

28. Just Energy does not pay Sales Agents compensation for overtime, vacation pay, minimum wage, or public holiday and premium pay.⁵³ Similarly, Just Energy does not pay any Canada Pension Plan ("CPP") or Employment Insurance ("EI") contributions on behalf of the Sales Agents they employ.⁵⁴

C. Change in characterization of Sales Agents – Just Energy now treats them as employees

29. In 2016, following certification, Just Energy opted to officially "convert" Sales Agents to employees by providing certain Sales Agents with offers of employment.⁵⁵

⁴⁹ A Reconciliation commission is a further commission that can be paid after a consumer has had a flow of gas or electricity for at least 60 days, this amount is always smaller than the Initial commission. IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 2) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, pp. 1319-1320.

⁵⁰ This requires a Sales Agent to be an active Sales Agents for at least a year, has submitted at least 65 residential customer contracts in the 3 month period preceding the Residual payment, has submitted Effective Contracts 30 days prior to the Residual payment and has not provided services to a competitor of Just Energy. IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 5) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1320.

⁵¹ IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 5) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1320.

⁵² IC Agreement (Independent Contractor Commission Schedule for Effective Contracts at para. 2) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1320-1321.

⁵³ JE Discovery Transcripts, January 24, 2018, Q. 376-385, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 820-821.

⁵⁴ JE Discovery Transcripts, January 24, 2018, Q. 382-383, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 821.

⁵⁵ Excerpts from transcript of Ravi Maharaj dated January 25, 2018 ("**JE Discovery Transcripts, January 25, 2018**"), Q. 1137, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 922; Email exchange between

30. Following the 2016 conversion, Sales Agents are now called "Energy Advisors".⁵⁶ They are responsible for the marketing of Just Energy products – they are Sales Agents.⁵⁷ Importantly, unlike Sales Agents, Energy Advisors are now paid hourly wages with overtime pay.⁵⁸

31. Sales Agents should properly be classified as employees, just as the courts in Ohio found that they ought to be.⁵⁹

ISSUES AND THE LAW

D. Certified Common Issues

32. This class proceeding was certified on behalf of the following class:

Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an Independent Contractor Agreement.⁶⁰

33. The Plaintiff moves for summary judgment in respect of the following twelve (12) certified common issues:

1. Are the Class Members "employees" of the Defendants pursuant to the Employment Standards Act, 2000 ("ESA")?
2. If the answer to (1) is "yes", are the Class Members in "pensionable employment" of the Defendants pursuant to the Canada Pension Plan ("CPP")?

Rosalba Gullo, Richard Teixeira and Ryan Parnell, Exhibit "13" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 728.

⁵⁶ JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1191-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928.

⁵⁷ Role Description: Sales, Exhibit "12" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 720; JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1191-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928

⁵⁸ Role Description: Sales, Exhibit "12" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 724.

⁵⁹ *Hurt v. Commerce Energy, Inc.*, Case No. 1:12-CV-758, Doc. No. 808 (October 6, 2014), PBOA, Vol 1, Tab 1; *Hurt v. Commerce Energy, Inc.*, Case No. 1:12-CV-758, Doc. No. 853 (August 3, 2015) PBOA, Vol 1, Tab 2; *Hurt v. Commerce Energy, Inc.*, 2013 WL 4427257 (August 15, 2013) PBOA, Vol 1, Tab 3; *Hurt v. Commerce Energy, Inc.*, Case No. 1:12-CV-758 (Gwin J.) (January 29, 2018) PBOA, Vol 1, Tab 4; *Hurt v. Commerce Energy, Inc.*, 2018 WL 4204541 (September 4, 2018) PBOA, Vol 1, Tab 5.

⁶⁰ Exhibit "4" to the Alexander Affidavit, Plaintiff's MR, Vol. 1, Tab H4, pp. 170-176.

3. If the answer to (1) is "yes", are the Class Members in "insurable employment" of the Defendants pursuant to the Employment Insurance Act ("EI")?
4. If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the ESA, or do the Class Members fall within the exception to this exemption as route salespersons?
5. If the answers to (1) and (4) are "yes", do the minimum requirements of the ESA with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?
6. If the answers to questions (1) and (4) are "yes", do the Defendants owe contractual duties and/or a duty of good faith to:
 - a. Ensure that the Class Members were compensated with the minimum wage?
 - b. Ensure that the Class Members' hours of work were monitored and accurately recorded?
 - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
 - d. Ensure that the Class Members were compensated with vacation pay?
 - e. Ensure that the Class Members were compensated with and public holiday and premium pay?
7. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
8. If the answers to (1) and (4) are "yes", did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the ESA?
9. If the answers to (2) and/or (3) are "yes", did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?
10. Alternatively, did the Defendant owe a duty of care to the Class Members to:
 - a. ensure that Class Members are properly classified as employees;
 - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
 - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
 - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.
11. Did the Defendants breach any of the duties of care found to exist above? If so, how?
12. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay

owed to them, in accordance with the ESA, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?⁶¹

E. Summary Judgment Should be Granted on All Common Issues

34. The Supreme Court of Canada in *Hryniak v. Mauldin* provided guidance with respect to summary judgment motions as follows:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.⁶²

35. Summary judgment would be appropriate in this case as:

- (a) the factual evidence is before this court in a paper-based record which will allow for necessary findings of fact in a summary fashion;⁶³
- (b) the credibility of witnesses to ascertain what happened in an event is not an issue;
- (c) the focus of the common issues is on the impact that Just Energy's systemic organizational structure and approach to all class members has on the characterization of their status, which structure and approach is not factually disputed only the characterization is;
- (d) there is no expert evidence to weigh or assess; and
- (e) a trial wouldn't provide anything more than what this well-briefed motion can.

36. In his recent decision in *Brazeau v. Canada (AG)*, Justice Perell considered a voluminous and complex evidentiary record comprised of approximately 31,000 pages, not counting compendiums, when he addressed whether the charter rights of some 6,000 inmates were violated by the practice of solitary confinement.⁶⁴ He found in that case, while there were numerous difficult issues to be determined, there was no paucity of evidence to resolve them on

⁶¹ Certification Order, Exhibit "4" to the Alexander Affidavit, Plaintiff's MR, Vol. 1, Tab H4, pp. 170-176.

⁶² *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 49, 50, PBOA, Vol 1, Tab 6.

⁶³ *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at para. 270, PBOA, Vol 1, Tab 7.

⁶⁴ *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at para. 159, PBOA, Vol 1, Tab 7.

such a fulsome record.⁶⁵ As was the case in *Brazeau*, this Court may order summary judgment on the common issues leaving individual issues determinations for individual issues trials.⁶⁶

F. Sales Agents are employees of Just Energy – Common issue 1

i. Employee status: An objective test

37. In *671122 Ontario Ltd. v. Sagaz Industries Canada*⁶⁷ ("**Sagaz**"), the Supreme Court of Canada provided guidance on determining the true nature of an employment relationship. The central question is whether the person is performing services "as a person in business on his own account" - in other words "whose business is it"?⁶⁸

38. Following *Sagaz*, the Court of Appeal for Ontario in *Belton v. Liberty Insurance Co. of Canada*,⁶⁹ and then again in *Braiden v. La-Z-Boy Canada Limited*⁷⁰ adopted and applied a specific five (5) part test for determining the status of *commissioned salespeople*:

1. Whether or not the agent was limited exclusively to the service of the principal;
2. Whether or not the agent is subject to the control of the principal, not only as to the product sold, but also as to when, where and how it is sold;
3. Whether or not the agent has an investment or interest in what are characterized as the "tools" relating to his service;
4. Whether or not the agent has undertaken any risk in the business sense or, alternatively, has any expectation of profit associated with the delivery of his service as distinct from a fixed commission;

⁶⁵ *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at paras. 277, 280, PBOA, Vol 1, Tab 7.

⁶⁶ *Brazeau v. Canada (Attorney General)*, 2019 ONSC 1888 at para. 282, PBOA, Vol 1, Tab 7.

⁶⁷ *671122 Ontario Ltd. v. Sagaz Industries Canada*, 2001 SCC 59, PBOA, Vol 1, Tab 8 ["**Sagaz**"].

⁶⁸ *Sagaz* at para. 47, PBOA, Vol 1, Tab 8. The Court set out a list of non-exhaustive factors that should be considered which include: (1) the level of control the employer has over the worker's activities; (2) whether the worker provides his or her own equipment; (3) whether the worker hires his or her own helpers; (4) the degree of financial risk taken by the worker; (5) what the degree of responsibility for investment and management held by the worker; and (6) what the worker's opportunity for profit in the performance of his risks is. ("**Sagaz Factors**")

⁶⁹ *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358 (C.A.) at para. 11, PBOA, Vol 1, Tab 9 ["**Belton**"].

⁷⁰ *Braiden v. La-Z-Boy Canada Limited*, 2008 ONCA 464 at paras. 33-35, PBOA, Vol 1, Tab 10 ["**Braiden**"].

5. Whether or not the activity of the agent is part of the business organization of the principal for which he works. *In other words, whose business is it?*⁷¹

("Belton/Braiden Factors")

39. Courts in Ontario have repeatedly applied the *Belton/Braiden* factors to find commissioned salespersons who were subject to the control of their principal as "employees":⁷²

40. Other relevant principles on determinations of employment status include:

- (a) an interpretation of the *ESA* that encourages employers to comply with the minimum requirements of the Act, and so extends its protections to as many employees as possible, is to be favoured over one that does not;⁷³
- (b) Any doubt arising from difficulties in the language of the *ESA* should be resolved in favour of the claimant;⁷⁴
- (c) the wording of any agreement and purported intent cannot be determinative of an employment relationship;⁷⁵
- (d) employees cannot "consent" to work in violation of the *ESA*;⁷⁶
- (e) There is no basis pursuant to the *ESA* or the common law to workers paid only by commission are independent contractors;⁷⁷

⁷¹ *Belton* at para. 11, PBOA, Vol 1, Tab 9, citing the British Columbia Court of Appeal in *Doyle v. London Life Insurance Co.*, [1985] B.C.J. No. 2561 (C.A.) [*Doyle*], PBOA, Vol 1, Tab 11.

⁷² See *Cormier v. 1772887 Ontario Limited c.o.b. as St Joseph's Communications*, 2019 ONSC 587 for the most recent adoption of the *Belton/Braiden* Factors by the Ontario Superior Court, PBOA, Vol 1, Tab 12. See also Schedule "C" – Chart of Analogous Cases: *Moseley-Williams v. Hansler Industries Ltd.*, [2008] O.J. No. 4457 (S.C.) at paras. 29-42, PBOA, Vol 1, Tab 13; *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916 at paras. 47-50, PBOA, Vol 1, Tab 14; *King v. Merrill Lynch Canada Inc.*, [2005] O.J. No. 5028 (S.C.), PBOA, Vol 1, Tab 15; *Jaremko v. A.E. LePage Real Estate Services Ltd.*, [1987] O.J. No. 506 (H.C.), PBOA, Vol 1, Tab 16, aff'd [1989] O.J. No. 996 (C.A.), PBOA, Vol 1, Tab 17; *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B. (Adj.)) at paras. 8, 28, 51, PBOA, Vol 1, Tab 18; *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19; *Big Picture Home Entertainment Ltd. v. MacDonald*, 2016 CarswellOnt 18808 (Ont. L.R.B.), PBOA, Vol 1, Tab 20, varied 2016 CarswellOnt 20591 (Ont. L.R.B.); *Baker v. 9111140 Canada Inc.*, 2017 CarswellOnt 5875 (Ont. L.R.B.); PBOA, Vol 1, Tab 21; *R. v. Pereira*, 1988 CarswellAlta 88 (Q.B.), PBOA, Vol 1, Tab 22.

⁷³ *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 at pp. 1002-1003, PBOA, Vol 1, Tab 23.

⁷⁴ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 36, PBOA, Vol 1, Tab 24.

⁷⁵ *Braiden* at para. 21, PBOA, Vol 1, Tab 10; *Belton* at para. 11, PBOA, Vol 1, Tab 9.

⁷⁶ *Wood v. CTS of Canada Co.*, 2018 ONCA 758 at para. 95, PBOA, Vol 1, Tab 25.

⁷⁷ Courts have repeatedly considered and determined commissioned salespeople to be employees: see *Belton* and *Braiden* as examples. In addition, the *ESA* Policy on Overtime Pay specifically provides a guide for determining overtime pay for employees paid solely by commission - Ministry of Labour, *Employment Standards Act, 2000*

- (f) 'mandatory employment requirements' can be inferred by conduct;⁷⁸ and
- (g) an employer choosing to manage its employees through what it classifies as "independent" contractors is still bound by those agents' actions on its behalf.⁷⁹

ii. Sales Agents are employees of Just Energy

41. Just Energy's organizational structure, centralized recruitment, direction of Sales Agents' method, manner and location of work, the limited tools provided to Sales Agents by Just Energy, and the integral role of Sales Agents to Just Energy's business militate heavily in favour of a finding that Sales Agents are "employees" of Just Energy.

(1) Sales Agents are subject to the control of Just Energy

(a) Just Energy's organizational structure is inconsistent with independence

(i) Organizational structure of door-to-door sales at Just Energy

42. Despite claiming to have "independent contractors" running their own businesses while marketing Just Energy's products, Just Energy's door-to-door marketing channel through those "independent contractors" is highly structured across Ontario:

(a) Just Energy establishes marketing offices throughout Ontario;⁸⁰

Policy and Interpretation Manual, 2019, Release 1 (last updated March 22, 2019) at p. 241-242, PBOA, Vol 2, Tab 52..

⁷⁸ *Mazraani c. Industrielle Alliance*, 2016 TCC 65 at paras. 162, 169, 177, 239, 249, PBOA, Vol 1, Tab 26, rev'd on other grounds 2017 FCA 80; *Truong v. British Columbia*, 1999 BCCA 513 at paras. 28-29, PBOA, Vol 1, Tab 27; *MacDonald v. Richardson Greenshields of Canada Ltd.*, [1985] B.C.J. No. 2865 (S.C.), PBOA, Vol 2, Tab 28; *Sistema Toronto Academy Inc. v. Minister of National Revenue*, 2016 TCC 193 at paras. 29, 30 and 36, PBOA, Vol 2, Tab 29.

⁷⁹ *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B.) at paras. 8, 28, 51, PBOA, Vol 1, Tab 18; *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19. See principal/agency test in *Rockland Industries Inc. v. Amerada Minerals Corp. of Canada Ltd.*, [1980] 2 S.C.R. 2 at pp. 13-14, PBOA, Vol 2, Tab 30, and *Hav-A-Kar Leasing Ltd v. Vekselshtein*, 2012 ONCA 826 at para. 42, PBOA, Vol 2, Tab 31.

⁸⁰ JE Discovery Transcripts, January 24, 2018, Q. 269, 275, 278, 281, 282, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Tab H15, Vol. 2, at pp. 797, 798, 799; Marsellus Cross, Q. 15, 22-23, Transcript Brief, Tab 1, p. 5-6; Transcript of Cross-Examination of Daniel Gadoua dated March 6, 2019 ("**Gadoua Cross**"), Q. 58, Responding MR, Tab 3, p. 142.

- (b) in addition to an office administrator and recruiter who are employed by Just Energy, Just Energy offices are run by Regional Distributors;⁸¹
 - (c) Regional Distributors operate the Just Energy offices and manage the other "independent contractors" operating at the office on behalf of Just Energy;⁸²
 - (d) Of those "independent contractors" are Crew Coordinators, who supervise Sales Agents and take direction from Regional Distributors;⁸³
 - (e) All Sales Agents must operate out of one of the Just Energy offices;⁸⁴
 - (f) All Sales Agents, Crew Coordinators, Regional Distributors and National Distributors are all "independent contractors" of Just Energy;⁸⁵ and
 - (g) Just Energy imposes a commission-based compensation structure for this sales channel:
 - (i) Sales Agents get paid a fixed commission for contracts they originate;
 - (ii) Crew Coordinators get paid a fixed commission for contract they originate and received commissions on contracts originated by Sales Agents they supervise; and
 - (iii) Regional Distributors receive commissions on contracts originated by all Sales Agents and Crew Coordinators out of their offices.⁸⁶
- (ii) *Hierarchical structure is implemented by Just Energy*

43. This structure was designed and created by Just Energy, exists in all Just Energy offices in Ontario, and is directed to Sales Agents in the Just Energy orientation and training process.⁸⁷

This structure is implemented by Just Energy by, among other ways, Just Energy deciding who

⁸¹ JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Tab H15, Vol. 2, at pp. 800, 805; Marsellus Cross, Q. 14-16, 27-39 Transcript Brief, Tab 1, pp. 5, 7-9.

⁸² Marsellus Cross, Q. 27-39, Transcript Brief, Tab 1, p. 7-9; JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 800, 805; Distributor Agreement (at 3.1), Exhibit "24" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, p. 1572.

⁸³ Marsellus Cross, Q. 27-39, Transcript Brief, Tab 1, p. 7-9; JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, 359, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Tab H15, Vol. 2, at pp. 800, 805, 817.

⁸⁴ JE Discovery Transcripts, January 24, 2018, Q. 257, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 794.

⁸⁵ JE Discovery Transcripts, January 24, 2018, Q. 305-306, 355, 356, 362, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 805, 816-818.

⁸⁶ Teixeira Cross, Q. 66-70, Transcript Brief, p. 55-56; Marsellus Cross, dated March 6, 2019, Q. 52-53, Transcript Brief, p. 11.

⁸⁷ Training Module 1 – Your Opportunity at Just Energy, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, p. 2401; Marsellus Cross, Q. 33-37; Transcript Brief, p. 11; Schwantz Affidavit at para. 8, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab E, pp. 69; Nemati Affidavit at para. 7, Plaintiff's MR, Vol. 1, Tab F, p. 76.

can become a National or Regional Distributor, deciding what Just Energy offices are opened in Ontario, and deciding which National/Regional Distributor is permitted to run which office.⁸⁸

44. The compensation structure established and implemented by Just Energy reinforces and promotes this hierarchical system. Just Energy goes so far as to suggest to Sales Agents that if they work hard, some day they might be able to become Crew Coordinators or Regional Distributors with their own offices and get to receive commissions off the backs of the Sales Agents they would then be supervising.⁸⁹

45. It is no coincidence that all Just Energy offices are operated in this hierarchical structure – Just Energy directed that to ensure a consistent marketing effort on its behalf across Ontario.

(iii) Just Energy's sales offices

46. Sales Agents must operate out of Just Energy offices owned or operated by Just Energy:
- (a) The office space is owned or leased by Just Energy – not Regional Distributors;⁹⁰
 - (b) The offices have Just Energy signs outside and inside marking them as Just Energy offices;⁹¹
 - (c) Just Energy staffs these offices with Just Energy employees (as characterized by Just Energy) such as an "administrator" and a "recruiter" who assist the Regional Distributor in the management of the office;⁹² and

⁸⁸ Teixeira Affidavit, para. 16, Responding MR, p. 0048; JE Discovery Transcripts, January 24, 2018, Q. 269, 275, 278, 281, 282, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 797, 798, 799; Marsellus Cross, Q. 15, 22-23, Transcript Brief, Tab 1, p. 5-6; Gadoua Cross, Q. 58, Responding MR, Tab 3, p. 142.

⁸⁹ Teixeira Affidavit, para. 9, Responding MR, p. 0003; Marsellus Affidavit, para. 19, Responding MR, p. 0848; Training Module 1, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56 at p. 2402; Training Module 3, Exhibit "62" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 62 at p. 2545

⁹⁰ JE Discovery Transcripts, January 24, 2018, Q. 269, 270, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, pp. 797.

⁹¹ JE Discovery Transcripts, January 24, 2018, Q. 275-284, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 798, 789.

⁹² JE Discovery Transcripts, January 24, 2018, Q. 285, 305-306, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 800, 805; Marsellus Cross, Q. 14-16, 27-39 Transcript Brief, Tab 1, pp. 5, 7-9.

(d) Just Energy provides all promotional materials, promoting Just Energy, for use in the offices.⁹³

(iv) *Regional Distributors manage offices and agents for Just Energy*

47. The Regional Distributors are the ones who manage the office and Sales Agents for Just Energy. Just Energy expressly assigns these duties to the Regional Distributor:

Section 3.1 Service Retainer

(1) JUST ENERGY hereby retains the Service Provider and the Service Provider hereby agrees to provide the services described below (the "Services") in the Province of Ontario, or in such province that JEC, or an Affiliate thereof, may designate from time to time, in accordance with the terms of this Services Agreement and consistent with the highest standards of integrity with respect to representations to the public on behalf of JUST ENERGY and its affiliates:

- (a) with the approval of JUST ENERGY, to advertise for and interview, recruit, educate, motivate and guide the activities of Independent Contractors;
- (b) through the Independent Contractors, to solicit Contracts using forms and solicitation material approved and supplied by JUST ENERGY or its Affiliates;
- (c) to ensure that each Independent Contractor executes an Independent Contractor Agreement;
- (d) to submit to JUST ENERGY completed contract forms for Contracts obtained by the Independent Contractors on a weekly basis in accordance with JUST ENERGY's practice as determined from time to time;
- (e) to ensure that Independent Contractors use the highest standards of integrity in soliciting Contracts;
- (f) to regularly report to JUST ENERGY any material breach by Independent Contractors with respect to the Independent Contractor obligations set out in each of their Independent Contractor Agreements;
- (g) to ensure that the Independent Contractors orally advise each customer of the material terms of the Contract prior to it being signed by the customer; and
- (h) to implement the compliance materials provided to the Service Provider by JUST ENERGY from time to time.

(2) The Service Provider agrees to read, and to ensure that all Independent Contractors read and, where required, sign, any applicable Code of Conduct.

⁹³ Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381

- (3) The Service Provider, the Principal and JUST ENERGY agree that:
- (a) the Independent Contractors are independent contractors of JUST ENERGY or an Affiliate thereof, as the case may be, and not independent contractors of the Service Provider or the Principal;
 - ...
 - (e) the Service Provider and the Principal will comply with all directions of JUST ENERGY or its Affiliates with respect to the marketing of Contracts, including a decision by JUST ENERGY or any Affiliate thereof that the Service Provider and/or the Principal cease or limit such marketing for any specified: (i) period of time, (ii) area, (iii) number of Contracts, (iv) number of residential customer equivalents, or (v) number of Independent Contractors.

(4) The Service Provider shall communicate, at least weekly, and immediately where a matter material to JUST ENERGY arises, with the Executive Vice President, Sales or the Senior Vice President, Regional General Manager, Canada of JUST ENERGY, or with such person designated by such persons from time to time, respecting the Service Provider's obligations pursuant to this Agreement.⁹⁴

48. Just Energy contracts with Regional Distributors to act as its agent in the supervision and direction of Sales Agents. In doing so, Regional Distributors' actions bind Just Energy.⁹⁵

49. Regional Distributors direct Sales Agents and Crew Coordinators on a daily basis.⁹⁶ To Sales Agents and Crew Coordinators in the day-to-day operations the Regional Distributor was Just Energy. The Regional Distributors held themselves out to Sales Agents and Crew Coordinators as having control over them, including the ability to discipline, hire and terminate

⁹⁴ Distributor Services Agreement (Undertaking 10), July 5, 2018 – Responses to Undertakings, Exhibit "18" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, pp. 1261-1262.

⁹⁵ *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B.), at paras. 8, 28, 51, PBOA, Vol 1, Tab 18; *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19. See principal/agency test in *Rockland Industries Inc. v. Amerada Minerals Corp. of Canada Ltd.*, [1980] 2 S.C.R. 2 at para. 32, PBOA, Vol 2, Tab 30, and *Hav-A-Kar Leasing Ltd v. Vekselshtein*, 2012 ONCA 826 at para. 42, PBOA, Vol 2, Tab 31.

⁹⁶ 27-39, Transcript Brief, p. 7-9; Maresellus Cross, Q., Teixeira Cross, Q. 221-223, Transcript Brief, Tab 2, pp 96-97; Schwantz Affidavit at paras.9-11, 15, Plaintiff's MR, Vol. 1, Tab B, pp. 14-15; Borg Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab C, pp. 56-58; Acton Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Lavigne Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab E, pp. 70-71; Nematı Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab F, pp. 77-78; Schwantz Cross, Q. 97, Transcript Brief, pp. 178-179; Borg Cross, Q. 510-511, Transcript Brief, p. 713.

the employment of the Sales Agents and Crew Coordinators.⁹⁷ Sales Agents and Crew Coordinators simply understood that the Regional Distributors were acting as or on behalf of Just Energy and had the authority they exuded.⁹⁸

(v) *Sales Agents and sales offices are the door-to-door sales division of Just Energy*

50. Just Energy conducted its door-to-door residential marketing of gas and electricity contracts by Sales Agents through the above-noted hierarchical structure. The Regional Distributors report to the Executive Vice President, Sales (an employee as deemed by Just Energy) who in turn reports to Senior Vice President, Regional Manager, Canada (an "employee" as deemed by Just Energy). This structure is no different than any sales division within any typical sales-dependent company. If one simply changes the Just Energy-imposed "names" of positions the organizational structure would look no different than any other company with an employee structure:

Vice President, Regional Manager, Canada >> Executive Vice President, Sales >> Regional Sales or Office Manager (Regional Distributor) >> Sales Supervisor (Crew Coordinator) >> Salesperson (Sales Agent)

⁹⁷ Schwantz Cross, Q. 103, 111-113, Transcript Brief, pp. 180-183; Nemati Cross, Q. 182-183, Transcript Brief, p. 392, 393; Lavigne Cross, Q. 255-257, Transcript Brief, p. 469; Acton Cross, Q. 201-203, Transcript Brief, p. 562; Borg Cross, Q. 471-475, Transcript Brief, p. 703.

⁹⁸ Schwantz Cross, Q. 103, 111-113, Transcript Brief, pp. 180-183; Nemati Cross, Q. 182-183, Transcript Brief, p. 392, 393; Lavigne Cross, Q. 255-257, Transcript Brief, p. 469; Acton Cross, Q. 201-203, Transcript Brief, p. 562; Borg Cross, Q. 471-475, Transcript Brief, p. 703.

51. In fact, this is what the organizational structure looked like at Just Energy just after it stopped calling its Sales Agents "independent contractors" and started treating them as employees effective November 28, 2016:⁹⁹

Vice President, Regional Manager, Canada >> Executive Vice President, Sales >> Territory Sales Manager (Regional Distributor) >> Field Sales Manager (Crew Coordinator) >> Just Energy Advisor (Sales Agent).¹⁰⁰

52. Change the names and artificial employer-imposed characterization, and you have a basic structure of an employee sales division.

(b) Just Energy's centralized recruitment of Sales Agents

53. All Sales Agent are centrally recruited by Just Energy.¹⁰¹ Just Energy has employees (as deemed by Just Energy) whose job it is to recruit Sales Agents on a daily basis.¹⁰² Just Energy's own evidence is that it "... provided its recruiters with standardized recruitment materials" that "ensured that a consistent message was conveyed to recruits."¹⁰³ Just Energy's policy on the recruitment of "independent contractors" seeks to ensure that "all Regional offices meets all Just Energy requirements" by, among other things, requiring that all recruitment placements come from Just Energy Sales Operations.¹⁰⁴

⁹⁹ JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1a91-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928; Email exchange between Rosalba Gullo, Richard Teixeira and Ryan Parnell, Exhibit "13" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, p. 728.

¹⁰⁰ JE Discovery Transcripts, January 25, 2018, Q. 1134-1138, 1170-1180, 1191-1194, Exhibit "16" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H16, p. 922, 924-928.

¹⁰¹ JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763.

¹⁰² JE Discovery Transcripts, January 24, 2018, Q. 70, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 763; Teixeira Affidavit, paras. 29-31, Responding MR, Tab 1, pp. 9-10.

¹⁰³ Teixeira Affidavit, para. 30, Responding MR, Tab 1, pp. 10.

¹⁰⁴ Independent Contractor and Employee Recruitment Policy dated November 10, 2014, Exhibit "136" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 136 at p. 4876.

54. Ads are placed by Just Energy.¹⁰⁵ Those answering the ads speak to Just Energy and are directed to a particular Just Energy sales office.¹⁰⁶ The Just Energy recruiters there (employees as deemed by Just Energy) conduct "interviews" and sign the ICAs with the Sales Agents.¹⁰⁷

55. Just Energy did all of this to maintain control of this door-to-door sales channel.

(c) Just Energy Directs Sales Agents on Method of Work

(i) Uniform training and orientation dictated by Just Energy

56. The orientation process is standard and dictated by Just Energy.¹⁰⁸ The orientation process follows the same pattern:

- (a) "interview" of recruits at the Just Energy offices by Regional Distributors or recruiters;
- (b) Sales Agents are provided with their ICA to review and execute;
- (c) Regional Distributors or recruiters administer Just Energy's training through its five (5) module training program;
- (d) Regional Distributors or recruiters administer the OEB's training module;
- (e) Recruiters administer an OEB examination;
- (f) After passing the OEB examinations, Sales Agents are provided with their badge and sent into the field for more direct training and to market for Just Energy.¹⁰⁹

¹⁰⁵ Teixeira Affidavit, paras. 27-28, Responding MR, Tab 1, p. 9.

¹⁰⁶ Teixeira Affidavit, paras. 32-33, Responding MR, Tab 1, p. 10.

¹⁰⁷ JE Discovery Transcripts, January 24, 2018, Q. 387, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 822; Teixeira Affidavit, paras. 33-34, 38-39, Responding MR, Tab 1, pp. 10-12.

¹⁰⁸ Just Energy Ontario LP Door to Door Recruiting and Orientation Process, Exhibit "35" to the Alexander Affidavit, Plaintiff's MR, Vol. 3, Tab H35, p. 2237; Ontario OEB Module/Orientation Process, Exhibit "79" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H79, pp. 2813-2815; Guidebook – Independent Contractor Orientation – Ontario – Part I, Exhibit "81" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H81, pp. 2820-2934; Guidebook – Independent Contractor Orientation – Ontario – Part 3, Exhibit "82" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H82, pp. 2936-2967.

¹⁰⁹ Teixeira Affidavit, paras. 41-60, Responding MR, Tab 1, pp. 12-17; Schwantz Affidavit at paras. 4-8, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab E, p. 69; Nemati Affidavit at paras. 4-7, Plaintiff's MR, Vol. 1, Tab F, pp. 76.

57. The orientation and training process takes 1-2 days and is undertaken at every Just Energy Office for every Sales Agent.¹¹⁰ Just Energy provides central training to all Regional Directors and recruiters on how to conduct these orientation and training sessions.¹¹¹

(ii) Training directs Sales Agents how to perform their jobs for Just Energy

58. Just Energy trains all Sales Agents in the same manner using a centralized and standard training course.¹¹² The five (5) module course is all-encompassing and instructs Sales Agents on how to do their job for Just Energy.¹¹³ In particular, Sales Agents are trained on:

- (a) Just Energy and its group of companies;¹¹⁴
- (b) Just Energy's sales hierarchy;¹¹⁵
- (c) Just Energy's products;¹¹⁶
- (d) the market for Just Energy's products;¹¹⁷
- (e) acceptable marketing practices;¹¹⁸
- (f) when and how long to market;¹¹⁹
- (g) how to dress;¹²⁰

¹¹⁰ JE Discovery Transcripts, January 24, 2018, Q. 1047, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at p. 904; Schwantz Affidavit at para. 6, Plaintiff's MR, Tab B, p. 12; Borg Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at para. 6, Plaintiff's MR, Vol. 1, Tab D, p. 62.

¹¹¹ JE Discovery Transcripts, January 24, 2018, Q. 399, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 825; Ontario OEB Module/Orientation Process, Exhibit "79" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H79, pp. 2813-2815; Guidebook – Independent Contractor Orientation – Ontario – Part I, Exhibit "81" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H81, pp. 2820-2934; Guidebook – Independent Contractor Orientation – Ontario – Part 3, Exhibit "82" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H82, pp. 2936-2967.

¹¹² Teixeira Affidavit, paras. 45, Responding MR, Tab 1, p. 13; JE Discovery Transcripts, January 24, 2018, Q. 500-509, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 836-838.

¹¹³ Training Modules 1-5, Exhibits "56", "59", "62", "66", and "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56, 59, 62, 66, and 69 at pp. 2395-2407, 2434-2455, 2477-2485, 2537-2547, 2570-2586.

¹¹⁴ Training Module 1, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56 at p. 2398.

¹¹⁵ Training Module 1, Exhibit "56" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 56 at p. 2402.

¹¹⁶ Training Module 2, Exhibit "59" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 59 at p. 2435-2444.

¹¹⁷ Training Module 2, Exhibit "59" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 59 at p. 2437-2444.

¹¹⁸ Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2545-2546.

¹¹⁹ Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2540.

- (h) how to sell to customers including:
 - (i) the sales process;
 - (ii) how to approach customers;
 - (iii) how to convince a customer to provide their energy bill;
 - (iv) how to explain Just Energy products;
 - (v) how to handle questions;
 - (vi) how to explain and sign an agreement; and
 - (vii) how to address the verification call.¹²¹

(d) Just Energy directs Sales Agents when they work

59. Thereafter Just Energy's direction on how the Sales Agents perform their work continues:
- (a) daily morning meetings are held where best practices are stressed to Sales Agents by Regional Distributors and Crew Coordinators;¹²²
 - (b) Sales Agents undergo daily role playing with Regional Distributors and/or Crew Coordinators before heading to the field;¹²³
 - (c) Sales Agents are provided with a "Sales Binder" created by Just Energy that provides direction to Sales Agents on topics such as:¹²⁴
 - (i) how to market in hot & cold weather conditions;¹²⁵
 - (ii) customer interaction scripts;¹²⁶

¹²⁰ Training Module 4, Exhibit "66" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 66 at p. 2542.

¹²¹ Training Module 5, Exhibit "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tabs H 69 at p. 2574-2586.

¹²² Teixeira Affidavit, paras. 62-63, Responding MR, Tab 1, p. 18; Marsellus Affidavit, paras. 45-47, Responding MR, Tab 2, p. 854; Schwantz Affidavit at para. 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, pp. 63-64; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, pp. 78.

¹²³ Teixeira Affidavit, paras. 62-63, Responding MR, Tab 1, p. 18; Marsellus Affidavit, paras. 45-47, Responding MR, Tab 2, p. 854; Schwantz Affidavit at para. 14 and 15(c), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 77; Nemati Affidavit at para. 13 and 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 84.

¹²⁴ JE Discovery Transcripts, January 24, 2018, Q. 539-543, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 842-843.

¹²⁵ Marketing in Hot and Cold Weather Conditions, Exhibit "41" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H41, p. 2319; JE Discovery Transcripts, January 24, 2018, Q. 620-626, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 856-858;

¹²⁶ The Customer Interaction, Exhibit "42" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab 42, p. 2324; JE Discovery Transcripts, January 24, 2018, Q. 591-593, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 851-852.

- (iii) objection handling scripts;¹²⁷
 - (iv) what a Sales Agent needs while marketing;¹²⁸
 - (v) how to interact with disabled customers;¹²⁹ and
 - (vi) acceptable marketing practices.¹³⁰
- (d) job shadowing of Sales Agents is conducted by Crew Coordinators in the field;¹³¹
 - (e) supervision and direction of Sales Agents is provided by Crew Coordinators in the field;¹³² and
 - (f) weekly calls are conducted between Just Energy and Regional Distributors as to various operational matters.¹³³
- (e) Just Energy monitors, tracks and disciplines non-compliance**

60. Just Energy also established an extensive system to monitor and track Sales Agents performance and discipline non-compliance:

- (a) Just Energy trains Sales Agents on OEB requirements;¹³⁴

¹²⁷ Objection Handling– Ontario (JECF), Exhibit "44" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 44, p. 2335; JE Discovery Transcripts, January 24, 2018, Q. 607-612, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 854-855.

¹²⁸ What you need while marketing, Exhibit "46" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 46, p. 2362; JE Discovery Transcripts, January 24, 2018, Q. 536-539, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at pp. 841-842.

¹²⁹ Interacting with Customers with Disabilities, Exhibit "47" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 47, p. 2364J; E Discovery Transcripts, January 24, 2018, Q. 552-553, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at p. 844.

¹³⁰ Acceptable Marketing Practice: Code of Compliance - Ontario, Exhibit "48" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 48, p. 2366; JE Discovery Transcripts, January 24, 2018, Q. 560-863, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at pp. 846-847.

¹³¹ Teixeira Affidavit, para. 54, Responding MR, Tab 1, p. 16.

¹³² Schwantz Affidavit at para. 12 and 15(j), Plaintiff's MR, Vol. 1, Tab B, p. 13, 15; Borg Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab C, p. 56, 57; Acton Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab D, p. 63, 64; Lavigne Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab E, p. 77, 78; Nematy Affidavit at para. 11, 14(i), Plaintiff's MR, Vol. 1, Tab F, p. 84, 85.

¹³³ Teixeira Affidavit, para. 64, Responding MR Tab 1, p. 18; Bi-weekly Renewal Emails, Exhibits "112(AA)", "112(BB)", "112(CC)", "112(DD)", "112(EE)", "112(FF)" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 112AA-FF, pp. 4279-4524.

¹³⁴ JE Discovery Transcripts, January 24, 2018, Q. 643-676, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 15, at pp. 861-867; Ontario Energy Board - Code of Conduct for Gas Marketers, Exhibit "83" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 83, pp. 2969-3008; Ontario Energy Board - Electricity Retailer Code of Conduct, Exhibit "84" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 84, pp. 3010-3051; Just Energy – Ontario Industry Training Assessment Booklet, Exhibit "86" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 86, pp. 3055-3072; Quiz Slide for LMS Users, Exhibit "87" to the Alexander Affidavit, Plaintiff's

- (b) Just Energy has a dedicated compliance department established to monitor the Sales Agents compliance with Just Energy directions and regulations including;¹³⁵
 - (i) daily reporting to Just Energy offices regarding complaints;
 - (ii) bi-weekly conference calls with Sales Offices about compliance issues;
 - (iii) conducting in-person audits of Just Energy offices;
 - (iv) tracking complaints for each Sales Agents;¹³⁶
- (c) Just Energy imposes a "Compliance Matrix" for Sales Agents directing the type of discipline to be imposed for various conduct, including suspensions, fines and termination of employment;¹³⁷ and
- (d) Just Energy imposes fines or deducts money from Sales Agents' compensation for contracts that are later deemed invalid.¹³⁸
- (f) Just Energy directs Sales Agents on where to work**

61. Just Energy also directs Sales Agents on where they should market:

- (a) During the daily morning meetings the marketing locations for the day are determined by the Regional Distributors and Crew Coordinators, which locations are determined by:¹³⁹
 - (i) the use maps to keep track of areas previously marketed;¹⁴⁰
 - (ii) do-not-solicit lists provided by Just Energy;¹⁴¹

MR, Vol. 5, Tab H 87, pp. 3074-3179; Just Energy (JE) and Ontario Energy Board (OEB) Training Proctor Step by Step, Exhibit "89" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 89, pp. 3183-3187.

¹³⁵ JE Response to OEB Supp. Request, Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, pp. 3321-3322.

¹³⁶ JE Response to OEB Supp. Request, Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, p. 3323, 3331.

¹³⁷ Compliance Matrix, Exhibit "101" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 101, pp. 3488-3491.

¹³⁸ JE Response to OEB Supp. Request, Exhibit "94" to the Alexander Affidavit, Plaintiff's MR, Vol. 5, Tab H 94, p. 3333.

¹³⁹ Marsellus Affidavit, paras. 61-65, Responding MR, Tab 2, p. 858-859; Schwantz Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 15, 203, Transcript Brief, pp. 353, 402; Schwantz Cross, Q. 271-272, 669, Transcript Brief, pp. 221-222, 334.

¹⁴⁰ Marsellus Affidavit, at paras. 74-75, Responding MR, Tab 2, p. 861; Marsellus Cross, Q. 154-167, Transcript Brief, Tab 1, pp. 35-37; Schwantz Cross, Q. 271, Transcript Brief, Tab 4, p. 222; Nemati Cross, Q. 218, Transcript Brief Tab 5, p. 406; Borg Cross, Q. 397-401, Transcript Brief, Tab 8, p. 688-689.

¹⁴¹ Marsellus Affidavit at paras. 74-75, Responding MR, Tab 2, p. 861; Do Not Solicit Report, Exhibit "127" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 127, p. 4811; Email from Rosalba Gulbo to Just Energy Recruiters and Administrators dated 01/10/2014, Exhibit "128" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 128, p. 4813.

- (iii) coordination with Just Energy's installation technicians;¹⁴²
- (iv) discussions among Crew Coordinators on pervious marketing areas;¹⁴³ and
- (v) discussions between Just Energy sales offices;¹⁴⁴
- (b) Sales Agents are driven to the field in vans by Crew Coordinators;¹⁴⁵
- (c) Sales Agents are dependent on Just Energy for transportation to the various marketing locations, which are often a significant distance from the office;¹⁴⁶
- (d) Just Energy provided vans to the sales offices to transport Sales Agents;¹⁴⁷
- (e) Crew Coordinators or Sales Agents are threatened with termination if they don't market in the approved areas;¹⁴⁸
- (f) iPads are used to monitor and track the locations of Sales Agents in real time;¹⁴⁹
- (g) Just Energy provides updates to offices about regulatory issues in various areas;¹⁵⁰
- (h) Just Energy facilitates the application for and receipt of permits for Sales Agent to marketing in certain areas, which must be done in advance;¹⁵¹ and

¹⁴² Teixeira Affidavit, at para. 67, Responding MR, Tab 1, p. 19.

¹⁴³ Gadoua Cross, Q. 85, Transcript Brief, Tab 3, p. 149; Borg Cross, Q. 400, Transcript Brief, Tab 8, p. 688.

¹⁴⁴ Gadoua Cross, Q. 102, Transcript Brief, Tab 3, p. 154.

¹⁴⁵ Teixeira Affidavit, para. 88, Responding MR tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28; Schwantz Cross Q. 128, Transcript Brief, Tab 4, pp. 185-186; Lavigne Cross, Q. 194-199, Transcript Brief, Tab 7, pp. 459-460; Acton Cross, Q. 163-165, Transcript Brief, Tab 7, pp. 553-554; Borg Cross, Q. 368-374, 459-462, Transcript Brief, Tab 8. pp. 682-683, 700-701.

¹⁴⁶ Teixeira Affidavit, para. 88, Responding MR, Tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28.

¹⁴⁷ Marsellus Cross, Q. 117-122, Transcript Brief, Tab 1, p. 25-26.

¹⁴⁸ Schwantz Affidavit at para. 120, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at paras. 18, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab F, p. 79.

¹⁴⁹ Schwantz Cross, Q. 544-55, Transcript Brief, Tab 4, p. 299; Just Energy Mobile Presentation, Exhibit "118" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H118, pp. 4654-4700; Live Energy Application – iPad, Exhibit "130" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H130, pp. 4821-4839; Just Energy Mobile Management Portal – Presentation, Exhibit "122" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H122, pp. 4708-4735.

¹⁵⁰ Email from Ravi Maharaj to Regional Distributors dated February 17, 2015, Exhibit "113" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H113, pp. 4526-4527.

¹⁵¹ Email from Ravi Maharaj to Regional Distributors dated September 18, 2014, Exhibit "114" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H114, pp. 4529-4530; Just Energy – Permit Handbook, Exhibit "124" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H124, pp. 4772-4786.

- (i) regular road trip or push weeks are organized where Sales Agents travel to specific distant locations for a full week.¹⁵²

(2) Exclusivity to Just Energy

62. In marketing for Just Energy the Sales Agents are unable to work for others in the same industry or at all. Just Energy mandates its ICAs that Sales Agents cannot provide services to other businesses "that compete directly with the business carried on by Just Energy corp. or its affiliates during the term of the Agreement and for a period of three (3) weeks following the termination of this Agreement".¹⁵³ Even if they wanted to, given the extensive control exerted over Sales Agents, and the time commitment of 6 days per week, it is impossible for Sales Agents to work anywhere else.¹⁵⁴

63. It is both a tacit requirement and explicit requirement that the employment of all Sales Agents is exclusive to Just Energy.

(3) Just Energy provides the tools of work

64. Just Energy creates and provides all the "tools" for the job, without which the Sales Agents cannot complete their work for Just Energy:

- (a) all gas and electricity contracts are provided by Just Energy;

¹⁵² Teixeira Affidavit, paras. 135, 137, Responding MR, Tab 1, pp. 37-38; Gadoua Affidavit, para. 67, Responding MR, Tab 3, p. 887; Schwantz Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 270-271, Transcript Brief, Tab 4, pp. 221-222; Nemati Cross, Q. 230-231, Transcript Brief, Tab 5, p. 410; Lavigne Cross, Q. 247, Transcript Brief, Tab 6, p. 467.

¹⁵³ IC Agreement (para. 6) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1315.

¹⁵⁴ Schwantz Affidavit at para. 17 and 21, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab D, pp. 65; Lavigne Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 16 and 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 36, Transcript Brief, Tab 4, p. 164.

- (b) all marketing materials must be created and approved of by Just Energy;¹⁵⁵
- (c) Just Energy name tags and badges are provided by Just Energy;¹⁵⁶
- (d) Just Energy branded clothing is provided for purchase;¹⁵⁷
- (e) Just Energy provides the verification call centre and process;¹⁵⁸
- (f) Just Energy registers the Sales Agents with the OEB;¹⁵⁹ and
- (g) do-not-solicit lists are provided by Just Energy.¹⁶⁰

(4) Sales Agents have no chance at profit, other than being paid their wages

65. Just Energy pays the Sales Agents a fixed commission based on the type of contract they successfully marketed. Just Energy's business is to buy gas and electricity wholesale and resell that gas and electricity retail to consumers. It makes money based on the spread between the price it pays for the gas and electricity and the price it receives from its customers. That is Just Energy's business. The Sales Agents have no ability or opportunity to profit in this business, or even their own "sales businesses" (as is to be asserted by Just Energy) as Sales Agents:

- (a) do not purchase gas and electricity wholesale;
- (b) have no ability to change the price of any contract marketed to customers;
- (c) do not make any profit based on the price Just Energy can buy the gas and electricity and the price it can sell that gas and electricity; and
- (d) only receive fixed (not variable) commissions on contracts successfully marketed for Just Energy; and

¹⁵⁵ Just Energy Memo dated November 22, 2012, Exhibit "53" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H53, p. 2381.

¹⁵⁶ Teixeira Affidavit, para 104, Responding MR Tab 1, p. 29.

¹⁵⁷ Schwantz Affidavit at para. 15(d), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(c), Plaintiff's MR, Vol. 1, Tab F, p. 78; Schwantz Cross, Q. 355-356, Transcript Brief, Tab 4, p. 246; Teixeira Affidavit, para 106, Responding MR, Tab 1, p. 29.

¹⁵⁸ The Customer Interaction, Exhibit "50" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H 50, p. 2373.

¹⁵⁹ Teixeira Affidavit, para 104, Responding MR. Tab 1, p. 29.

¹⁶⁰ Marsellus Affidavit at paras. 74-75, Responding MR, Tab 2, p. 861; Do Not Solicit Report, Exhibit "127" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 127, p. 4811; Email from Rosalba Gulbo to Just Energy Recruiters and Administrators dated 01/10/2014, Exhibit "128" to the Alexander Affidavit, Plaintiff's MRR, Vol. 7, Tab H 128, p. 4813.

(e) have no ability to change or negotiate the commission schedule.¹⁶¹

66. No different than any commission-based employee, Sales Agents do not get a chance at profit - they only earn their set wages.

(5) Sales Agents are Integral Part of Just Energy's Business

(a) Sales Agents are not secondary or complimentary to Just Energy's business

67. Just Energy's business is the profiting on gas and electricity contracts. Sales Agents market those contracts for Just Energy. In 2009, door-to-door marketing made up approximately 95% of Just Energy's sales revenue, presently 21%.¹⁶² Their work is not secondary or complementary to the primary business of Just Energy – it is the business of Just Energy.

(b) "Sales" is not an independent business

68. It is not clear what independent business Just Energy asserts that 8,000 Sales Agents undertook while working for Just Energy. By its own ICA, Sales Agents were not permitted to market for any competitors¹⁶³ – therefore, Sales Agents could not have been in the gas and electricity marketing business, because they could only market for Just Energy. In addition, Sales Agents can only market for Just Energy because they don't have any time to do anything else. Additionally, Sales Agents have no power to change any gas and electricity contract terms or pricing – they have no independent control of their alleged business.

¹⁶¹ JE Discovery Transcripts, January 24, 2018, Q. 1069-1072, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 907-908; IC Agreement (para. 4 and commission schedule) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H19, p. 1314, 1319.

¹⁶² Affidavit of Richard Teixeira sworn January 25, 2016, Exhibit "A" to the Teixeira Affidavit, sworn January 10, 2019, para. 8, Responding MR, Tab 1A, p. 46.

¹⁶³ IC Agreement (para. 6) – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Responding MR, Vol. 2, Tab H19, pp. 1315.

69. What is left is the business of "sales". However, "sales" is not an independent business – one must have something to sell,¹⁶⁴ here Sales Agents could only sell Just Energy products.

(6) Unilateral title and characterization by Just Energy is not determinative

70. Just Energy makes much of the ICA and their repeated statements that Sales Agents knew they were "independent contractors" who were not provided with any of the benefits or minimum protections of the *ESA*, or otherwise.

71. The Sale Agents had no ability to make changes to the ICA. The ICA makes convenient self-serving statements about the legal nature of the relationship that do not accord with the actual working relationship. Those self-serving statements, which simply deter vulnerable workers from asserting their minimum employment rights, are not determinative and simply should not be considered – one cannot "consent" to violate the *ESA*.¹⁶⁵ Sales Agents simply wanted a job and thought they had one working for Just Energy.

(7) Conclusion on employment status

72. The hierarchical organizational structure, the control and direction asserted by Just Energy on the manner and location in which Sales Agents were to perform their work, the exclusivity of the relationship, and the nature of the Sales Agents' "business", is entirely inconsistent with the existence of 8,000 independent businesses all happening to sell only Just Energy products – Sales Agent are clearly employees of Just Energy.

¹⁶⁴ *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916, PBOA , Vol 1, Tab 14; *Big Picture Home Entertainment Ltd. v. MacDonald*, 2016 CarswellOnt 18808 (Ont. L.R.B.), PBOA , Vol 1, Tab 20, varied on other grounds 2016 CarswellOnt 20591 (Ont. L.R.B.), *Baker v. 9111140 Canada Inc.*, 2017 CarswellOnt 5875 (Ont. L.R.B.); PBOA , Vol 1, Tab 21; *R. v. Pereira*, 1988 CarswellAlta 88 (Q.B.), PBOA , Vol 1, Tab 22.

¹⁶⁵ *Braidon* at para. 21, PBOA , Vol 1, Tab 10; *Belton* at para. 11, PBOA , Vol 1, Tab 9; *Wood v. CTS of Canada Co.*, 2018 ONCA 758 at para. 95, PBOA , Vol 1, Tab 25.

G. Exemptions under the *ESA* do not Apply to Sales Agents – Common issue 4

i. O. Reg 285/01: Exemption from *ESA* and the "Route Salesperson" exception

73. O. Reg 285/01, s. 2(1)(h) exempts certain salespeople from *ESA* protections:

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,...
- (h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,
- (i) relate to goods or services, and
 - (ii) are normally made away from the employer's place of business.¹⁶⁶

74. The exemption does not apply to Sales Agents.

ii. Sales Agents do not make "offers to purchase" or "sales"

75. There is ample evidence that Class members are not making "offers to purchase" or "sales", and therefore, section 2(1)(h) of O.Reg 285/01 has no applicability.¹⁶⁷

76. The Ontario *Sale of Goods Act*, provides this on when an agreement becomes a sale:

- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.¹⁶⁸

77. The Sales Agents only market gas and electricity contracts to potential Just Energy customers.¹⁶⁹ Sales Agents cannot vary terms of contracts while at the door. The agreements with Just Energy are not even completed while at the door with a potential customer – only Just Energy can complete a contract through a "confirmation call" with the consumer.¹⁷⁰ Just Energy

¹⁶⁶ O. Reg. 285/01 at s. 2(1)(h), Plaintiff's Factum, Schedule B, Tab B.

¹⁶⁷ *Wilkins v Just Energy Marketing Corp*, 308 F.R.D. 170 (Ill. Dist. Ct. 2015) at 180, PBOA, Vol 2, Tab 32.

¹⁶⁸ *Sale of Goods Act*, R.S.O. 1990, c. S.1, s. 2(4), Plaintiff's Factum, Schedule B, Tab B.

¹⁶⁹ IC Agreement, (para. 1), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 19, p. 1313.

¹⁷⁰ Training Module 5, Exhibit "69" to the Alexander Affidavit, Plaintiff's MR, Vol. 4, Tab H69, p. 2579.

retains sole discretion as to whether a contract is ultimately accepted.¹⁷¹ Before any contract is completed the following steps must be completed, which are all overseen by Just Energy:

- A Just Energy confirmation call must take place, in which a Just Energy employee goes over all the terms of the contract and confirms the contents of the contract with the potential customer;
- The potential customer must clear a credit check with Just Energy;
- The potential customer must be accepted by the utility company that will be providing the actual flow of energy; and
- Just Energy always maintains sole discretion over whether to accept any customer.¹⁷²

78. At best, Sales Agents marketed *potential contracts* for services to *potential customers*.

iii. Sales Agents are "route salespersons"

(1) What is a "route salesperson"?

79. The *ESA* does not define a "route salesperson". Case law and the *ESA* interpretation manual define it to include those who are subject to significant control over scheduling.¹⁷³

80. As such, the key consideration governing the exemption is the degree of control exercised by the employee relative to the employer.¹⁷⁴ Related questions such as whether the "routes" are determined by the employer or the employee, the capacity for chance of profit/risk of loss, and

¹⁷¹ IC Agreement, (para. 4), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 19, p. 1314.

¹⁷² IC Agreement, (para. 4), – Responses to Undertakings, Exhibit "19" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H 19, p. 1314.

¹⁷³ *VanGrootel v. Advance Beauty Supply Ltd.*, 2016 CarswellOnt 5069 (Ont. L.R.B.) at paras. 12-14, PBOA, Vol 2, Tab 33, citing *Hayat v. Clegg Campus Marketing*, [2006] O.E.S.A.D. No. 606 (Ont. L.R.B.) PBOA, Vol 2, Tab 34; *Kognitive Marketing Inc. v. Ontario (Director of Employment Standards)*, [2015] O.E.S.A.D. No. 1129 (Ont. L.R.B.), PBOA, Vol 2, Tab 35; *Crestway Electronics Ltd., Re*, [1992] O.E.S.A.D. No. 132 (Ont. E.S.B. (Adjud.)); PBOA, Vol 2, Tab 36; *Wright, Re*, [1992] O.E.S.A.D. No. 91 (Ont. E.S.B. (Adjud.)), PBOA, Vol 2, Tab 37; and *Orlov v. Amato*, [2003] O.E.S.A.D. No. 590 (Ont. L.R.B.), PBOA, Vol 2, Tab 38.

¹⁷⁴ Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 971, PBOA, Vol 2, Tab 52.

entrepreneurial activity by the employee are also relevant.¹⁷⁵ This analysis is similar to the *Belton/Braiden* factor analysis above at paragraphs 37-72 above which overwhelmingly reveals Just Energy's control over Sales Agents.

(2) Just Energy's control and direction on locations is overwhelming

81. There is ample evidence that Just Energy controlled and directed the marketing locations of its Sales Agents such that they could not be considered independent salespeople exercising a high degree of independence and entrepreneurial initiative to locate customers for Just Energy:

- (a) Sales Agents' marketing locations for the day are determined by the Regional Distributors and Crew Coordinators at daily morning meetings;¹⁷⁶
- (b) Locations are determined by:
 - (i) the use maps to keep track of areas previously marketed;¹⁷⁷
 - (ii) do-not-solicit lists provided by Just Energy;¹⁷⁸
 - (iii) coordination with Just Energy's installation technicians;¹⁷⁹
 - (iv) discussions among Crew Coordinators on pervious marketing areas;¹⁸⁰ and
 - (v) discussions between Just Energy sales offices;¹⁸¹
- (c) Sales Agents are dependent on Just Energy for transportation to the various marketing locations, which are often a significant distance from the office;¹⁸²

¹⁷⁵ Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 971, PBOA, Vol 2, Tab 52.

¹⁷⁶ Marsellus Affidavit, paras. 61-65, Responding MR Tab 2, p. 858-859; Schwantz Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab C, p. 56; Acton Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab D, p. 63; Lavigne Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(b), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 15, 203, Transcript Brief, pp. 353, 402; Schwantz Cross, Q. 271-272, 669, Transcript Brief, pp. 221-222, 334.

¹⁷⁷ Marsellus Affidavit, at paras. 74-75, Responding MR, Tab 2, p. 861; Marsellus Cross, Q. 154-167, Transcript Brief, Tab 1, pp. 35-37; Schwantz Cross, Q. 271, Transcript Brief, Tab 4, p. 222; Nemati Cross, Q. 218, Transcript Brief Tab 5, p. 406; Borg Cross, Q. 397-401, Transcript Brief, Tab 8, p. 688-689.

¹⁷⁸ Marsellus Affidavit at paras. 74-75, Responding MR, Tab 2, p. 861; Do Not Solicit Report, Exhibit "127" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 127, p. 4811; Email from Rosalba Gulbo to Just Energy Recruiters and Administrators dated 01/10/2014, Exhibit "128" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H 128, p. 4813.

¹⁷⁹ Teixeira Affidavit, at para. 67, Responding MR, Tab 1, p. 19.

¹⁸⁰ Gadoua Cross, Q. 85, Transcript Brief, Tab 3, p. 149; Borg Cross, Q. 400, Transcript Brief, Tab 8, p. 688.

¹⁸¹ Gadoua Cross, Q. 102, Transcript Brief, Tab 3, p. 154.

- (d) Sales Agents are driven to the field in vans by Crew Coordinators;¹⁸³
- (e) Just Energy provided vans to the Sales offices to transport Sales Agents;¹⁸⁴
- (f) Crew Coordinators or Sales Agents are threatened with termination if they don't market in the approved areas;¹⁸⁵
- (g) iPads are used to monitor and track the locations of Sales Agents in real time;¹⁸⁶
- (h) Just Energy provides updates to offices about regulatory issues in various areas;¹⁸⁷
- (i) Just Energy facilitates the application for and receipt of permits for Sales Agent to marketing in certain areas, which must be done in advance;¹⁸⁸
- (j) regular road trips or push weeks are organized where Sales Agents travel to specific distant locations for a full week.¹⁸⁹ Sales Agents perform these duties six (6) days per week every week;¹⁹⁰ and

¹⁸² Teixeira Affidavit, para. 88, Responding MR, Tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28.

¹⁸³ Teixeira Affidavit, para. 88, Responding MR tab 1, p. 24; Gadoua Affidavit, para. 51, Responding MR, Tab 3, p. 883; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 13; Borg Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(e), Plaintiff's MR, Vol. 1, Tab F, p. 78; Nemati Cross, Q. 97, Transcript Brief, Tab 5, p. 370; Marsellus Cross, Q. 131, Transcript Brief, Tab 1, p. 28; Schwantz Cross, Q. 128, Transcript Brief, Tab 4, pp. 185-186; Lavigne Cross, Q. 194-199, Transcript Brief, Tab 7, pp. 459-460; Acton Cross, Q. 163-165, Transcript Brief, Tab 7, pp. 553-554; Borg Cross, Q. 368-374, 459-462, Transcript Brief, Tab 8, pp. 682-683, 700-701.

¹⁸⁴ Marsellus Cross, Q. 117-122, Transcript Brief, Tab 1, p. 25-26.

¹⁸⁵ Schwantz Affidavit at para. 120, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at paras. 18, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 18, Plaintiff's MR, Vol. 1, Tab F, p. 79.

¹⁸⁶ Schwantz Cross, Q. 544-55, Transcript Brief, Tab 4, p. 299; Just Energy Mobile Presentation, Exhibit "118" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H118, pp. 4654-4700; Live Energy Application – iPad, Exhibit "130" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H130, pp. 4821-4839; Just Energy Mobile Management Portal – Presentation, Exhibit "122" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H122, pp. 4708-4735.

¹⁸⁷ Email from Ravi Maharaj to Regional Distributors dated February 17, 2015, Exhibit "113" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H113, pp. 4526-4527.

¹⁸⁸ Email from Ravi Maharaj to Regional Distributors dated September 18, 2014, Exhibit "114" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H114, pp. 4529-4530; Just Energy – Permit Handbook, Exhibit "124" to the Alexander Affidavit, Plaintiff's MR, Vol. 7, Tab H124, pp. 4772-4786.

¹⁸⁹ Teixeira Affidavit, paras. 135, 137, Responding MR, Tab 1, pp. 37-38; Gadoua Affidavit, para. 67, Responding MR, Tab 3, p. 887; Schwantz Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab B, p. 16; Borg Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 19, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 270-271, Transcript Brief, Tab 4, pp. 221-222; Nemati Cross, Q. 230-231, Transcript Brief, Tab 5, p. 410; Lavigne Cross, Q. 247, Transcript Brief, Tab 6, p. 467.

- (k) Sales Agents has a standard daily regimen of: attending the Just Energy regional office, attending daily meetings and role playing, getting transported by Crew Coordinators to their marketing locations to start marketing by 1:00pm, get picked up by the Crew Coordinator and 9:00pm and return to the office.¹⁹¹

(3) The "route salesperson" exemption applies to Sales Agents

82. The ESA Interpretation Manual refers to the following example in reference to meeting the definition of "route salesperson":

Another case on the question of what is a route salesperson, *Schiller v P & L Corporation Ltd.*, 2012 CanLII 12611 (ON LRB), concerned **an employee selling newspaper subscriptions door-to-door who was picked up by the employer with other employees each day and dropped off in an assigned neighbourhood. She was provided with a list of non-subscribers on particular streets within the neighbourhood to solicit and she could not increase her ability to earn more by working at times or in neighbourhoods other than those assigned to her by the employer.** The Board held that she was a route salesperson because sales in this case were conducted on the basis of "routes" which were established and determined by the employer.¹⁹²

83. This case might as well be styled *Omarali v Just Energy*.

84. Just as in that case, Sales Agents do not choose their marketing locations. Those decisions are made and directed by Just Energy through its Regional Distributors. Sales Agent are therefore provided with a "route" by Just Energy and are therefore "route salesperson[s]" as defined in s. 2(1)(h) of O. Reg. 285/01 and are thereby not exempt from the *ESA*.

¹⁹⁰ Schwantz Affidavit at para. 16, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab D, pp. 65; Lavigne Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 20, Plaintiff's MR, Vol. 1, Tab F, p. 79; Schwantz Cross, Q. 36, Transcript Brief, Tab 4, p. 164.

¹⁹¹ Schwantz Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14, Plaintiff's MR, Vol. 1, Tab F, p. 78.

¹⁹² Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 971 [emphasis added], PBOA, Vol 2, Tab 52.

H. The provisions of the *ESA* are Express or Implied Terms of the Contracts of Class Members – Common issue 5

85. The *ESA* applies to employees and provides legislative minimum employment standards which cannot be contracted out of:

No contracting out

5. (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void.¹⁹³

85. Recently, in *Wood v. CTS of Canada Co.*, the Ontario Court of Appeal affirmed that employees cannot "consent" to work in violation of the *ESA*.¹⁹⁴ As such, if an individual is found to be an "employee", that individual is owed statutory benefits under the *ESA* regardless of what that individual implicitly or explicitly "consented" to by signing an employment contract or agreement - the minimum employment standards set out by the *ESA* apply.¹⁹⁵ By operation of law the provisions of the *ESA* are terms of the class members' "contracts" with Just Energy.

I. Just Energy did not Pay Minimum Wage, Overtime, Vacation, Public Holiday or Premium Pay to Sales Agents – Common issue 8

86. The *ESA* provides the following for employees: (i) minimum wage;¹⁹⁶ (ii) overtime pay;¹⁹⁷ vacation pay;¹⁹⁸ and public holiday and premium pay.¹⁹⁹ Just Energy admits that it did not pay Sales Agents any of those minimum requirements.²⁰⁰

¹⁹³ *ESA* at ss. 3 and 5(1), Plaintiff's Factum, Schedule B, Tab B.

¹⁹⁴ *Wood v. CTS of Canada Co.*, 2018 ONCA 758 at para. 95, PBOA, Vol 1, Tab 25, leave to appeal to SCC denied, 2019 CarswellOnt 6052 (S.C.C.).

¹⁹⁵ *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986 at p. 1005, PBOA, Vol 1, Tab 23; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29 at para. 137, PBOA, Vol 2, Tab 39.

¹⁹⁶ *ESA* at s. 23, Plaintiff's Factum, Schedule B, Tab B.

¹⁹⁷ *ESA* at s. 22, Plaintiff's Factum, Schedule B, Tab B.

¹⁹⁸ *ESA* at s. 35.2, Plaintiff's Factum, Schedule B, Tab B.

¹⁹⁹ *ESA* at s. 24, Plaintiff's Factum, Schedule B, Tab B.

J. Failure to make CPP and EI contributions – Common issues 2, 3 and 9

87. Section 9 of the *Canada Pension Plan*, and sections 68 and 82(1) of the *Employment Insurance Act* require employers to contribute CPP and EI remittances on behalf of "employees" employed in "pensionable" and "insurable employment".²⁰¹

88. Section 6(1) of the *Canada Pension Plan* statute defines "pensionable employment" as "employment in Canada that is not excepted employment", whereas section 5(1) of the *Employment Insurance Act* stipulates that "insurable employment" is "employment in Canada by one or more employers under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise".²⁰²

89. Although neither statute defines "employment", it is well-settled that the *Sagaz* factors apply to that determination.²⁰³ Once it is found that Sales Agents are employees of Just Energy as per common issue 1, it follows that Just Energy is obligated to pay CPP and EI contributions.

90. Just Energy has admitted it has not paid CPP or EI contributions for any Sales Agent.²⁰⁴

²⁰⁰ JE Discovery Transcripts, January 24, 2018, Q. 376-385, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at pp. 820-821.

²⁰¹ *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 9, Plaintiff's Factum, Schedule B, Tab B; *Employment Insurance Act*, S.C. 1996, c. 23, ss. 68 and 82(1), Plaintiff's Factum, Schedule B, Tab B.

²⁰² *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 6(1), Plaintiff's Factum, Schedule B, Tab B; *Employment Insurance Act*, S.C. 1996, c. 23, s. 5(1), Plaintiff's Factum, Schedule B, Tab B.

²⁰³ *Dynamic Industries Ltd v. R.*, 2005 FCA 211, PBOA, Vol 2, Tab 40; *1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)*, 2013 FCA 85 at para. 23, PBOA, Vol 2, Tab 41; *Porotti v. Canada (National Revenue)*, 2014 TCC 267 at para. 5, PBOA, Vol 2, Tab 42, aff'd 2016 FCA 29, PBOA, Vol 2, Tab 43.

²⁰⁴ JE Discovery Transcripts, January 24, 2018, Q. 382-383, Exhibit "15" to the Alexander Affidavit, Plaintiff's MR, Vol. 2, Tab H15, at p. 821.

K. Just Energy breached its contractual duties or was otherwise negligent – Common issues 6, 7, 10 and 11

i. Just Energy owes a duties of care

91. Employers owe a common law duty of care and duty of good faith and fair dealing towards its employees.²⁰⁵ This includes a duty of good faith in the performance of contractual obligations.²⁰⁶ As such, in the course of the employer/employee relationship, the parties must not lie or mislead their interests.²⁰⁷

92. Just Energy imposed self-serving ICAs and a pay structure on Sales Agents. Sales Agents had no authority or power to make any changes to the ICAs or commission structure. They had no ability to change how they were to do their work or where they were to do it for Just Energy. In their relationship, they were at the mercy of Just Energy – all they wanted was a job. Just Energy itself states that Sales Agents are mostly of little means and have little or no sales experience before working for Just Energy.²⁰⁸

93. As a result of the closeness of this relationship, the nature of the power imbalance, and the vulnerability of the class, Just Energy owed the Sales Agents a duty of care and duty of good faith to properly characterize their employment, to ensure they were compensated with the minimum wage, ensure their hours were monitored and recorded, to advise them of their correct status and entitlement to overtime, and to ensure they were compensated by the minimum

²⁰⁵ *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at para. 63, PBOA, Vol 2, Tab 44; *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 at para. 98, PBOA, Vol 2, Tab 45. See also the SCC's most recent discussion on duty of care in *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 at paras. 16-24, PBOA, Vol 2, Tab 46.

²⁰⁶ *Bhasin v. Hrynew*, 2014 SCC 71 at paras. 62, 73, PBOA, Vol 2, Tab 47.

²⁰⁷ *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at p. 125, PBOA, Vol 2, Tab 44; *Antunes v. Limen Structures Ltd.*, 2015 ONSC 2163 at para. 64, PBOA, Vol 2, Tab 48, aff'd 2016 ONCA 509, PBOA, Vol 2, Tab 49.

²⁰⁸ Teixeira Affidavit, para. 88, Responding MR, Tab 1, p. 24.

requirements of the *ESA*.²⁰⁹

ii. Just Energy breached its duties

94. The evidence that Sales Agents are employees of Just Energy is overwhelming, and there should be, and should have been, no question as to whether Sales Agents should have properly been considered as such by Just Energy. Instead, Just Energy forced the "independent contractor" characterization on Sales Agents for years. In doing so they have consciously avoided the minimum requirements of the *ESA* and deterred Sales Agents from enforcing their rights.

95. In the case of the Class they have done so since at least 2012. Over that time period, there were over 8,000 Sales Agents. Of that approximately 2/3 were not able to successful market a contract for Just Energy.²¹⁰ Since they were only paid on commission for contracts they originated and not on the basis of a minimum wage, they worked for Just Energy for free. This didn't bother Just Energy as it wasn't required to pay those Sales Agents anything - they just took advantage of their labour on behalf of Just Energy without any risk.

96. Just Energy did not exercise reasonable care to ensure that Sales Agents were classified as employees before or during their employment with Just Energy. Instead, Just Energy took advantage of the vulnerability of its Sales Agents by providing all Sales Agents with a self-serving ICA which unlawfully deemed those individuals "independent contractors". This unlawful practice allowed Just Energy to forego paying its Sales Agents their statutory entitlements under the *ESA* in further of its own business interests.

²⁰⁹ *Rankin (Rankin's Garage & Sales) v. J.J.*, 2018 SCC 19 at paras. 16-24, PBOA, Vol 2, Tab 46.

²¹⁰ Teixeira Affidavit, para. 121, Responding MR, Tab 1, p. 33.

iii. Resulting damage

97. As a result of the breach of the duties owed, Just Energy failed to pay and facilitate the payment of minimum wage, overtime, vacation pay, public holiday and premium pay and CPP/EI contributions to or on behalf of the Plaintiff and Class – all of which is now owing.

98. However, Just Energy has impaired the Class' ability to prove their entitlements to these damages. In particular, Just Energy failed and refused to keep track of the hours of the Sales Agents, despite ample ability and requirement to do so.²¹¹ This may impact Class Member's ability to prove damages. An adverse inference against any argument by Just Energy that damages are not determinable should be applied to all class members' claims.

L. Just Energy was unjustly enriched by misclassifying sales agents – Common issue 12

99. In *Garland v. Consumers' Gas Co.*, the Supreme Court of Canada stated that the test for unjust enrichment has three (3) elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment.²¹² This test is easily satisfied.

100. By misclassifying the Sales Agents, Just Energy has been enriched as a result of avoiding the payment of the minimum requirements of the *ESA* and the payment of CPP and EI contributions for all Sales Agents, in addition to the costs of facilitating a system to accurately account and make such payments. The Class has suffered a corresponding deprivation in the form of unpaid minimum *ESA* requirements and having to pay, or not getting the benefit of, the employer portion of CPP or EI contributions. As there can be no contracting out of the *ESA* and

²¹¹ *ESA* at s. 15(1), Plaintiff's Factum, Schedule B, Tab B.

²¹² *Garland v. Consumers' Gas Co.*, [2004] 1 S.C.R. 629 at para. 30, PBOA, Vol 2, Tab 50.

the employees are properly classified as employees, there is no juristic reason for Just Energy's enrichment and the Class members' corresponding deprivation. This entitles the Class to equitable remedies for the unjust enrichment.

M. Appropriate common remedies and declarations

101. After determining the liability common issues, it is entirely within the purview of the trial judge to order an appropriate remedy whether or not they are certified as a common issue.²¹³

The failures by Just Energy as noted above cry out for a just remedy before any individual assessment process is required, or to assist that process.

i. Declarations and findings

102. In addition to the declarations of employment status, entitlement to the protections of the *ESA* and determinations of the common issues, the Plaintiff seeks the following declarations or finds that have ample support in the evidence:

- (a) a finding that Agents worked a standard work week of six (6) days per week;²¹⁴
- (b) a finding that standard work hours per day of at least 1:00pm to 9:00pm.²¹⁵
- (c) a finding that job training of at least 1 day was required of all Sales Agents;²¹⁶ and
- (d) a finding that the job training time is compensable.²¹⁷

²¹³ *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 134, PBOA, Vol 2, Tab 51.

²¹⁴ Schwantz Affidavit at para. 16, Plaintiff's MR, Vol. 1, Tab B, p. 15; Borg Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab C, p. 58; Acton Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab D, p. 65; Lavigne Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab E, p. 72; Nemati Affidavit at para. 15, Plaintiff's MR, Vol. 1, Tab F, p. 79.

²¹⁵ Teixeira Affidavit, para. 116, Responding MR, Tab 1, p. 32; Schwantz Affidavit at para. 15(f), Plaintiff's MR, Vol. 1, Tab B, p. 14; Borg Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab C, p. 57; Acton Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab D, p. 64; Lavigne Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab E, p. 71; Nemati Affidavit at para. 14(f), Plaintiff's MR, Vol. 1, Tab F, p. 78.

²¹⁶ Independent Contractor Orientation Guidebook, Exhibit "45" to the Alexander Affidavit, Vol. 4, Tab H45, p. 2346; Schwantz Affidavit at para. 5, Plaintiff's MR, Vol. 1, Tab B, p. 12; Borg Affidavit at para. 5, Plaintiff's MR, Vol. 1, Tab C, p. 55; Acton Affidavit at paras. 5-6, Plaintiff's MR, Vol. 1, Tab D, p. 62; Lavigne Affidavit at paras. 5-6, Plaintiff's MR, Vol. 1, Tab E, p. 69; Nemati Affidavit at paras. 5-6, Plaintiff's MR, Vol. 1, Tab F, p. 76.

ii. Damages orders

103. In addition to any amount to be recovered through an individual assessment process, and given the findings on the common issues and the uncontroverted evidence, the following damages orders can be made and are sought by the Plaintiff:

- (a) that Just Energy pay 4% vacation pay on all amounts already paid to the Class;
- (b) that Just Energy pay the Class for all CPP and EI contributions on amounts already paid to the Class;
- (c) that Just Energy pay each class member for one day of training at the applicable minimum wage.

104. None of these orders require any individual evidence and are effectively automatically required by a finding of employment status in this case.

PART III - ORDER REQUESTED

105. The Plaintiff requests that this Honourable Court grant summary judgment on all common issues, and the declarations, findings and orders noted in paragraphs 103 and 104 above, and costs of this motion and the action up to this date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of May, 2019.²¹⁸



Koskie Minsky LLP
Lawyers for the Plaintiff

²¹⁷ Ministry of Labour, *Employment Standards Act, 2000 Policy and Interpretation Manual*, 2019, Release 1 (last updated March 22, 2019) at p. 961, PBOA, Vol 2, Tab 52.

²¹⁸ A 48 page factum was initially served on May 2, 2019.

SCHEDULE "A"
LIST OF AUTHORITIES

Tab No.	Case
1.	<i>Hurt v. Commerce Energy, Inc.</i> , Case No. 1:12-CV-758, Doc. No. 808 (October 6, 2014)
2.	<i>Hurt v. Commerce Energy, Inc.</i> , Case No. 1:12-CV-758, Doc. No. 853 (August 3, 2015)
3.	<i>Hurt v. Commerce Energy, Inc.</i> , 2013 WL 4427257 (August 15, 2013)
4.	<i>Hurt v. Commerce Energy, Inc.</i> , Case No. 1:12-CV-758, Doc. No. 887 (January 29, 2018)
5.	<i>Hurt v. Commerce Energy, Inc.</i> , 2018 WL 4204541 (September 4, 2018)
6.	<i>Hryniak v. Mauldin</i> , 2014 SCC 7
7.	<i>Brazeau v. Canada (Attorney General)</i> , 2019 ONSC 1888
8.	<i>671122 Ontario Ltd. v. Sagaz Industries Canada Inc.</i> , 2001 SCC 59
9.	<i>Belton v. Liberty Insurance Co. of Canada</i> , [2004] O.J. No. 3358 (C.A.)
10.	<i>Braiden v. La-Z-Boy Canada Limited</i> , 2008 ONCA 464
11.	<i>Doyle v. London Life Insurance Co.</i> , [1985] B.C.J. No. 2561 (C.A.)
12.	<i>Cormier v. 1772887 Ontario Limited c.o.b. as St Joseph's Communications</i> , 2019 ONSC 587
13.	<i>Moseley-Williams v. Hansler Industries Ltd.</i> , [2008] O.J. No. 4457 (S.C.)
14.	<i>McKee v. Reid's Heritage Homes Ltd.</i> , 2009 ONCA 916
15.	<i>King v. Merrill Lynch Canada Inc.</i> , [2005] O.J. No. 5028 (S.C.)
16.	<i>Jaremko v. A.E. LePage Real Estate Services Ltd.</i> , [1987] O.J. No. 506 (H.C.)
17.	<i>Jaremko v. A.E. LePage Real Estate Services Ltd.</i> , [1989] O.J. No. 996 (C.A.)
18.	<i>Sooters Studios Ltd., Re</i> , 1991 CarswellOnt 7806 (O.E.S.B. (Adjud.))
19.	<i>Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)</i> , 2001 CarswellBC 4136 (Employment Standards Tribunal)

Tab No.	Case
20.	<i>Big Picture Home Entertainment Ltd. v. MacDonald</i> , 2016 CarswellOnt 18808 (Ont. L.R.B.)
21.	<i>Baker v. 9111140 Canada Inc.</i> , 2017 CarswellOnt 5875 (Ont. L.R.B.)
22.	<i>R. v. Pereira</i> , 1988 CarswellAlta 88 (Q.B.)
23.	<i>Machtinger v. HOJ Industries Ltd.</i> , [1992] 1 S.C.R. 986
24.	<i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , [1998] 1 S.C.R. 27
25.	<i>Wood v. CTS of Canada Co.</i> , 2018 ONCA 758
26.	<i>Mazraani c. Industrielle Alliance</i> , 2016 TCC 65
27.	<i>Truong v. British Columbia</i> , 1999 BCCA 513
28.	<i>MacDonald v. Richardson Greenshields of Canada Ltd.</i> , [1985] B.C.J. No. 2865 (S.C.)
29.	<i>Sistema Toronto Academy Inc. v. Minister of National Revenue</i> , 2016 TCC 193
30.	<i>Rockland Industries Inc. v. Amerada Minerals Corp. of Canada Ltd.</i> , [1980] 2 S.C.R. 2
31.	<i>Hav-A-Kar Leasing Ltd v. Vekselshtein</i> , 2012 ONCA 826
32.	<i>Wilkins v. Just Energy Corp., Inc.</i> , 308 F.R.D. 170 (I11. Dist. Ct. 2015)
33.	<i>VanGrootel v. Advance Beauty Supply Ltd.</i> , 2016 CarswellOnt 5069 (Ont. L.R.B.)
34.	<i>Hayat v. Clegg Campus Marketing</i> , [2006] O.E.S.A.D. No. 606 (Ont. L.R.B.)
35.	<i>Kognitive Marketing Inc. v. Ontario (Director of Employment Standards)</i> , [2015] O.E.S.A.D. No. 1129 (Ont. L.R.B.)
36.	<i>Crestway Electronics Ltd., Re</i> , [1992] O.E.S.A.D. No. 132 (O.E.S.B. (Adjud.))
37.	<i>Wright, Re</i> , [1992] O.E.S.A.D. No. 91 (O.E.S.B. (Adjud.))
38.	<i>Orlov v. Amato</i> , [2003] O.E.S.A.D. No. 590 (Ont. L.R.B.)
39.	<i>Wilson v. Atomic Energy of Canada Ltd.</i> , 2016 SCC 29
40.	<i>Dynamic Industries Ltd v. R.</i> , 2005 FCA 211

Tab No.	Case
41.	<i>1392644 Ontario Inc. (Connor Homes) v. Canada (National Revenue)</i> , 2013 FCA 85
42.	<i>Porotti v. Canada (National Revenue)</i> , 2014 TCC 267
43.	<i>Porotti v. Canada (National Revenue)</i> , 2016 FCA 29
44.	<i>Queen v. Cognos Inc.</i> , [1993] 1 S.C.R. 87
45.	<i>Wallace v. United Grain Growers Ltd.</i> , [1997] 3 S.C.R. 701
46.	<i>Rankin (Rankin's Garage & Sales) v. J.J.</i> , 2018 SCC 19
47.	<i>Bhasin v. Hrynew</i> , 2014 SCC 71
48.	<i>Antunes v. Limen Structures Ltd.</i> , 2015 ONSC 2163
49.	<i>Antunes v. Limen Structures Ltd.</i> , 2016 ONCA 509
50.	<i>Garland v. Consumers' Gas Co.</i> , [2004] 1 S.C.R. 629
51.	<i>Pro-Sys Consultants Ltd. v Microsoft Corporation</i> , 2013 SCC 57
52.	Ministry of Labour, <i>Employment Standards Act, 2000 Policy and Interpretation Manual</i> , 2019, Release 1 (last updated March 22, 2019)

SCHEDULE "B"
RELEVANT STATUTES

1. ***Employment Standards Act, 2002, S.O. 2000, c. 41***

To whom Act applies

3 (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

- (a) the employee's work is to be performed in Ontario; or
 - (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario.
- [...]

No contracting out

5 (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void.

Records

15 (1) An employer shall record the following information with respect to each employee, including an employee who is a homemaker:

[...]

3.1 The dates and times that the employee worked.

[...]

4. The number of hours the employee worked in each day and each week.

Overtime threshold

22 (1) Subject to subsection (1.1), an employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each work week or, if another threshold is prescribed, that prescribed threshold.

Same, two or more regular rates

(1.1) If an employee has two or more regular rates for work performed for the same employer in a work week,

- (a) the employee is entitled to be paid overtime pay for each hour of work performed in the week after the total number of hours performed for the employer reaches the overtime threshold; and
- (b) the overtime pay for each hour referred to in clause (a) is one and one-half times the regular rate that applies to the work performed in that hour.

Averaging

(2) An employee's hours of work may be averaged over separate, non-overlapping, contiguous periods of two or more consecutive weeks for the purpose of determining the employee's entitlement, if any, to overtime pay if,

- (a) the employee has made an agreement with the employer that his or her hours of work may be averaged over periods of a specified number of weeks; and

(b) the averaging period does not exceed four weeks or the number of weeks specified in the agreement, whichever is lower.

(2.1) Repealed: 2019, c. 4, Sched. 9, s. 8 (1).

Transition: certain agreements

(2.2) For the purposes of this section, each of the following agreements shall be treated as if it were an agreement described in clause (2) (a):

1. An agreement to average hours of work made under a predecessor to this Act.
2. An agreement to average hours of work made under this section as it read on February 28, 2005.
3. An agreement to average hours of work that complies with the conditions prescribed by the regulations made under paragraph 7 of subsection 141 (1) as it read on February 28, 2005.

Term of agreement

(3) Subject to subsections (3.1) and (3.2), an averaging agreement is not valid unless it provides for a start date and an expiry date.

Limit on agreement, not represented by trade union

(3.1) If the employee is not represented by a trade union, the averaging agreement's expiry date shall not be more than two years after the start date.

Limit on agreement, collective agreement applies

(3.2) If the employee is represented by a trade union and a collective agreement applies to the employee, an averaging agreement shall expire no later than the day a subsequent collective agreement that applies to the employee comes into operation.

Agreement may be renewed or replaced

(4) For greater certainty, an averaging agreement may be renewed or replaced if the requirements set out in this section are met.

Existing agreement

(5) Any averaging agreement that was made before the day the Restoring Ontario's Competitiveness Act, 2019 received Royal Assent in accordance with this section, as it read at the time, and that was approved by the Director under section 22.1, as it read at the time, is deemed to have met the requirements set out in subsections (2), (3), (3.1) and (3.2) and continues to be valid until the earlier of,

- (a) the day the agreement is revoked under subsection (6);
- (b) the day the Director's approval expires; or
- (c) the day the Director's approval is revoked.

(5.1) Repealed: 2019, c. 4, Sched. 9, s. 8 (4).

Agreement irrevocable

(6) No averaging agreement referred to in this section may be revoked before it expires unless the employer and the employee agree to revoke it.

Time off in lieu

(7) The employee may be compensated for overtime hours by receiving one and one-half hours of paid time off work for each hour of overtime worked instead of overtime pay if,

- (a) the employee and the employer agree to do so; and
- (b) the paid time off work is taken within three months of the work week in which the overtime was earned or, with the employee's agreement, within 12 months of that work week.

Where employment ends

(8) If the employment of an employee ends before the paid time off is taken under subsection (7), the employer shall pay the employee overtime pay for the overtime hours that were worked in accordance with subsection 11 (5).

Changing work

(9) If an employee who performs work of a particular kind or character is exempted from the application of this section by the regulations or the regulations prescribe an overtime threshold of other than 44 hours for an employee who performs such work, and the duties of an employee's position require him or her to perform both that work and work of another kind or character, this Part shall apply to the employee in respect of all work performed by him or her in a work week unless the time spent by the employee performing that other work constitutes less than half the time that the employee spent fulfilling the duties of his or her position in that work week.

Minimum wage

23 (1) An employer shall pay employees at least the minimum wage.

Room or board

(2) If an employer provides room or board to an employee, the prescribed amount with respect to room or board shall be deemed to have been paid by the employer to the employee as wages.

Determining compliance

(3) Compliance with this Part shall be determined on a pay period basis.

Hourly rate

(4) Without restricting the generality of subsection (3), if the minimum wage applicable with respect to an employee is expressed as an hourly rate, the employer shall not be considered to have complied with this Part unless,

- (a) when the amount of regular wages paid to the employee in the pay period is divided by the number of hours he or she worked in the pay period, other than hours for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to the minimum wage; and

(b) when the amount of overtime pay and premium pay paid to the employee in the pay period is divided by the number of hours worked in the pay period for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to one and one half times the minimum wage.

Public holiday pay

24 (1) An employee's public holiday pay for a given public holiday shall be equal to, (a) the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20; or

(b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

(1.1), (1.2) Repealed: 2018, c. 14, Sched. 1, s. 7 (2).

Premium pay

(2) An employer who is required under this Part to pay premium pay to an employee shall pay the employee at least one and one half times his or her regular rate.

Vacation pay

35.2 An employer shall pay vacation pay to an employee who is entitled to vacation under section 33 or 34, equal to at least,

(a) 4 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is less than five years; or

(b) 6 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is five years or more.

2. **O. Reg. 285/01: WHEN WORK DEEMED TO BE PERFORMED, EXEMPTIONS AND SPECIAL RULES**

Exemptions from Parts VII to XI of Act

2. (1) Parts VII, VII.1, VIII, IX, X and XI of the Act do not apply to a person employed, [...]

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer's place of business.

3. ***Sale of Goods Act, R.S.O. 1990, c. S.1***

When agreement becomes sale

2 (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

4. *Canada Pension Plan, R.S.C., 1985, c. C-8*

Pensionable employment

6 (1) Pensionable employment is

- (a) employment in Canada that is not excepted employment;
- (b) employment in Canada under Her Majesty in right of Canada that is not excepted employment; or
- (c) employment included in pensionable employment by a regulation made under section 7.

Employer's base contribution

9 (1) Every employer shall, in respect of each employee employed by the employer in pensionable employment, make an employer's base contribution for the year in which remuneration in respect of the pensionable employment is paid to the employee of an amount equal to the product obtained when the contribution rate for employers for the year is multiplied by the lesser of

- (a) the contributory salary and wages of the employee for the year paid by the employer, minus such amount as or on account of the employee's basic exemption for the year as is prescribed, and
- (b) the maximum contributory earnings of the employee for the year, minus the amount, if any, that is determined in the prescribed manner to be the employee's salary and wages on which a base contribution has been made for the year by the employer with respect to the employee under a provincial pension plan.

Employer's first additional contribution

(1.1) For 2019 and each subsequent year, an employer referred to in subsection (1) shall also, in respect of each employee employed by the employer in pensionable employment, make an employer's first additional contribution for the year in which remuneration in respect of the pensionable employment is paid to the employee of an amount equal to the product obtained when the first additional contribution rate for employers for the year is multiplied by the lesser of

- (a) the employee's contributory salary and wages for the year paid by the employer, minus the amount as or on account of the employee's basic exemption for the year that is prescribed, and
- (b) the employee's maximum contributory earnings for the year, minus the amount, if any, that is determined in the prescribed manner to be the employee's salary and wages on which a first additional contribution has been made for the year by the employer with respect to the employee under a provincial pension plan.

Employer's second additional contribution

(1.2) For 2024 and each subsequent year, an employer referred to in subsection (1) shall also, in respect of each employee employed by the employer in pensionable employment, make an employer's second additional contribution for the year in which remuneration in respect of the pensionable employment is paid to the employee of an amount equal to the

product obtained when the second additional contribution rate for employers for the year is multiplied by the amount equal to

(a) the amount by which the employee's contributory salary and wages for the year paid by the employer — not exceeding the employee's additional maximum pensionable earnings for the year — exceeds the employee's maximum pensionable earnings for the year,

minus

(b) the amount, if any, that is determined in the prescribed manner to be the employee's salary and wages on which a second additional contribution has been made for the year by the employer with respect to the employee under a provincial pension plan.

Succession of employers

(2) If one employer immediately succeeds another as the employer of an employee as a result of the formation or dissolution of a corporation or the acquisition — with the agreement of the former employer or by operation of law — of all or part of a business of the former employer, the successor employer may, for the application of subsections (1), (1.1) and (1.2) and 8(1), (1.1) and (1.2) and section 21, take into account the amounts paid, deducted, remitted or contributed under this Act by the former employer in respect of the year in relation to the employment of the employee as if they had been paid, deducted, remitted or contributed by the successor employer. If the employer takes those amounts into account with respect to the employer's contributions, the employer shall also take them into account with respect to the employee's contributions.

Self-employment succeeded by employment

(3) For the application of subsections (1), (1.1) and (1.2) and 8(1), (1.1) and (1.2) and section 21, if a person, in a year, is self-employed, ceases to be self-employed and becomes an employee of a corporation that is controlled by the person, the corporation may

(a) take into account the amount of contributory self-employed earnings of the person in the year as contributory salary and wages paid by the corporation to the employee in that year; and

(b) take into account one half of the contributions by the person in respect of self-employed earnings in the year as an amount deducted, remitted or contributed in relation to employee's contributions for that year, and one half of that amount as an amount remitted or contributed in relation to employer's contributions for that year.

5. *Employment Insurance Act, S.C. 1996, c. 23*

Types of insurable employment

5 (1) Subject to subsection (2), insurable employment is

(a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and

- whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;
- (b) employment in Canada as described in paragraph (a) by Her Majesty in right of Canada;
 - (c) service in the Canadian Forces or in a police force;
 - (d) employment included by regulations made under subsection (4) or (5); and
 - (e) employment in Canada of an individual as the sponsor or co-ordinator of an employment benefits project.

Employer's premium

68 Subject to sections 69 and 70, an employer shall pay a premium equal to 1.4 times the employees' premiums that the employer is required to deduct under subsection 82(1).

Deduction and payment of premiums

82 (1) Every employer paying remuneration to a person they employ in insurable employment shall

- (a) deduct the prescribed amount from the remuneration as or on account of the employee's premium payable by that insured person under section 67 for any period for which the remuneration is paid; and
- (b) remit the amount, together with the employer's premium payable by the employer under section 68 for that period, to the Receiver General at the prescribed time and in the prescribed manner.

SCHEDULE "C"
CHART OF ANALOGOUS CASES

CASE	SUMMARY OF PERTINENT FACTS AND FINDINGS
<p><i>Belton v. Liberty Insurance Co. of Canada</i>, [2004] O.J. No. 3358 (C.A.)</p> <p>Position: Commissioned life insurance sales agent</p>	<p>A call centre had eliminated direct contact between agents and customers with respect to policy changes and renewals, and further, all salespersons had managers, could not sell other insurance, and had no legal entitlement to the customers to which they sold.²¹⁹</p>
<p><i>Braiden v. La-Z-Boy Canada Limited</i>, 2008 ONCA 464</p> <p>Position: Salesperson for a furniture retailer</p>	<p>The employee worked exclusively for La-Z-Boy; was subject to control and monitoring by the employer in terms of territory, promotional methods, price, and manner of sale; was paid only on commission at prices established by the employer; and worked on a sales force which was a central to the manner in which La-Z-Boy distributed and sold its products.²²⁰</p>
<p><i>Moseley-Williams v. Hansler Industries Ltd.</i>, [2008] O.J. No. 4457 (S.C.)</p> <p>Position: Commissioned equipment salesperson</p>	<p>The employee was expected to devote his efforts exclusively to selling products on behalf of the employer; the employee was assigned a geographic territory in which to solicit which was altered by the employer; the employee only used a car and his phone as "tools" to perform his job which he received a car allowance and business gas reimbursement; the employee did not take on any business risk, only earned commissions, and was entirely financially-dependent on the employer including for his "operating costs" such as gas and phone bills; and the employer worked as a part of a group of sales representatives.²²¹</p>
<p><i>McKee v. Reid's Heritage Homes Ltd.</i>, 2009 ONCA 916</p> <p>Position: Commissioned residential home salesperson</p>	<p>The employee worked exclusively for the employer's company; was subject to the employer's control with respect to where she was to sell, the promotion methods she was to use, what she was to sell, and how much she had to sell for; the employer supplied the employee with stationary and forms; the employee profited solely through fixed commissions; the employee did not risk significant capital in her sales operation; the employer provided the employee with necessary facilities and tools; and the sales force that the employee worked for was a crucial element of the employer's business organization.²²²</p>
<p><i>King v Merrill Lynch Canada</i></p>	<p>The employees were limited to selling investments exclusively</p>

²¹⁹ *Belton* at para. 11, PBOA, Vol 1, Tab 9.

²²⁰ *Braiden* at para. 35, PBOA, Vol 1, Tab 10.

²²¹ *Moseley-Williams v. Hansler Industries Ltd.*, [2008] O.J. No. 4457 (S.C.), at paras. 30-41, PBOA, Vol 1, Tab 13.

²²² *McKee v. Reid's Heritage Homes Ltd.*, 2009 ONCA 916 at paras. 47-50, PBOA, Vol 1, Tab 14.

<p><i>Inc.</i>, [2005] O.J. No. 5028 (S.C.)</p> <p>Position: Commissioned stock/investment salesperson</p>	<p>through the employer; were treated as employees for income tax purposes; were subject to control through the policy manuals of the employer, approval of any advertising use, approval before speaking to media, monitoring of trading activity through compliance department, complaints process, filling out new account application for new clients. Although their hours of work and remuneration were not controlled these factors were not given much weight as the employees were paid solely on commission.²²³</p>
<p><i>Jaremko v. A.E. LePage Real Estate Services Ltd.</i>, [1987] O.J. No. 506 (H.C.), aff'd [1989] O.J. No. 996 (C.A.)</p> <p>Position: Commissioned real estate salesperson</p>	<p>The employee was subject to substantial control of his operations, through use of the employer's office, and secretarial assistance, the employer's policy and company discipline, receiving memoranda, ability to apply for promotions within the company, and inclusion in the company bonus and profit sharing plan. Although the employee had substantial freedom to operate from the point of view of arranging his time, a master-servant relationship was found to exist.²²⁴</p>
<p><i>Sooters Studios Ltd., Re</i>, 1991 CarswellOnt 7806 (Ont. E.S.B. (Adj.))</p> <p>Position: Commissioned managers overseeing film and photography sales</p>	<p>Nine "managers" employed at the defendant's various retail locations, each owned or leased by franchisees or the defendant, were supervised by regional "supervisors" who were labelled independent contractors. Employees were subject to substantial control in that only products approved by the defendant could be offered for sale (although managers had some discretion to give discounts). Although they hired and paid others, this was no necessarily inconsistent with the manager's being an employee.²²⁵</p>
<p><i>Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)</i>, 2001 CarswellBC 4136 (Employment Standards Tribunal)</p> <p>Position: Fundraising canvass person</p>	<p>The employee worked under the direction and control of a "crew manager" who was an independent contractor, who could bind the employer in contracts. The employee was subject to substantial control in that he did the work requested of him; he not able to hire others and go into business for himself (as he tried to do that once and the company rejected his proposal); his contract was for specific work and the company provided the materials.²²⁶</p>
<p><i>Big Picture Home Entertainment Ltd. v. MacDonald</i>, 2016 CarswellOnt</p>	<p>Although the employee had significant flexibility in determining hours of work and business opportunities, she was subject not in business for herself as the employer determined the neighbourhoods</p>

²²³ *King v. Merrill Lynch Canada Inc.*, [2005] O.J. No. 5028 (S.C.) at paras. 38-39, PBOA, Vol 1, Tab 15.

²²⁴ *Jaremko v. A.E. LePage Real Estate Services Ltd.*, [1987] O.J. No. 506 (H.C.) at para. 3, PBOA, Vol 1, Tab 16, aff'd [1989] O.J. No. 996 (C.A.), PBOA, Vol. 1, Tab 17.

²²⁵ *Sooters Studios Ltd., Re*, 1991 CarswellOnt 7806 (Ont. E.S.B.), at paras. 8, 28, 51, PBOA, Vol 1, Tab 18.

²²⁶ *Key Fund Raising Ltd. v. British Columbia (Director of Employment Standards)*, 2001 CarswellBC 4136 (Employment Standards Tribunal) at paras. 21, 31, PBOA, Vol 1, Tab 19.

<p>18808 (Ont. L.R.B.), varied on other grounds 2016 CarswellOnt 20591 (Ont. L.R.B.)</p> <p>Position: Commissioned salesperson of home entertainment systems</p>	<p>where claimant would conduct business; the employer determined the contents of brochures and business cards; employer tracked her while she worked; and the employer provided transportation, fuel, training, etc.²²⁷</p>
<p><i>Baker v. 9111140 Canada Inc.</i>, 2017 CarswellOnt 5875 (Ont. L.R.B.)</p> <p>Position: Commissioned door-to-door salesperson selling home and cooling systems</p>	<p>The employee was not engaged in business on his own account as he was driven to the areas where he did door-to-door sales, he was provided with worksheets to fill out about his efforts, and he was provided with blank contracts and never filled out a contract completely on his own. Although the employee could profit, it was only through commissions from the employer.²²⁸</p>
<p><i>R. v. Pereira</i>, 1988 CarswellAlta 88 (Q.B.)</p> <p>Position: Commissioned salespersons</p>	<p>The accused company hired eight children under the age of 15 to sell chocolate bars, contrary to the age restriction for employment under Alberta's <i>ESA</i>. The accused company provided the chocolate bars, provided transportation, and determined where the bars would be sold, approved any price variations. Although the sellers paid for their own meals and were responsible for lost or broken bars and dishonoured cheques, it could not be found that they were engaged in business as the accused company retained control throughout.²²⁹</p>

²²⁷ *Big Picture Home Entertainment Ltd. v. MacDonald*, 2016 CarswellOnt 18808 (OLRB) at para. 33, varied on other grounds 2016 CarswellOnt 20591 (Ont. L.R.B.), PBOA, Vol 1, Tab 20.

²²⁸ *Baker v. 9111140 Canada Inc.*, 2017 CarswellOnt 5875 (Ont. L.R.B.) at para. 10, PBOA, Vol 1, Tab 21.

²²⁹ *R. v. Pereira*, 1988 CarswellAlta 88 (Q.B.) at para. 35, PBOA, Vol 1, Tab 22.

Haidar Omarali v. Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P.

Court File No.: CV-15-527493-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

**FACTUM OF THE MOVING PLAINTIFF
(Summary Judgment Motion
Returnable June 11-13, 2019)**

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*THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

CITATION: Omarali v. Just Energy, 2016 ONSC 4094
COURT FILE NO.: CV-15-527493-CP
DATE: 20160727

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Haidar Omarali / Plaintiff

AND:

Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP /
Defendants

BEFORE: Justice Edward P. Belobaba

COUNSEL: *David Rosenfeld and Jody Brown* for the Plaintiff / Moving Party

Paul J. Martin, Laura F. Cooper and Janna L. Young for the Defendants /
Responding Parties

HEARD: June 21 and June 28, 2016

Proceeding under the *Class Proceedings Act, 1992*

CERTIFICATION DECISION

Introduction

[1] This is a motion to certify a proposed class action of some 7000 sales agents who were hired by the defendants as independent contractors and worked door-to-door selling their products. The plaintiff says the sales agents were misclassified - that they are not independent contractors but employees and are therefore entitled to the benefits and protections of the *Employment Standards Act*¹ such as minimum wage, overtime pay, and vacation and public holiday pay.

[2] Class counsel says this is “the archetypal misclassification case.” He says this to suggest that the proposed class action should be easily certified. The reality, of course, is

¹ *Employment Standards Act, 2000*, S.O. 2000, c. 41 (“ESA”).

otherwise. Misclassification cases are generally difficult to certify because individualized assessments are often required and commonality cannot be established.²

[3] Misclassification cases have been certified in two situations: one, where the issue was job function but the class was carefully defined to ensure class-wide job function similarity;³ and two, where the common issues were focused on the systemic nature of the defendant company's policies and practices rather than on class member entitlements.⁴ Otherwise, most misclassification cases that ask whether the class member is an employee (rather than say a manager) collapse under the weight of an "it depends" reality.⁵ I am not saying that an "archetypal misclassification case" can never be certified,⁶ only that the challenge in doing so should not be underestimated.

[4] That is why the defendants in this action argue that the determination whether the sales agents herein are independent contractors or employees can only be made on an individualized basis and, because there is no commonality, the matter cannot proceed as a class action. The defendants submit that the motion for certification must therefore be dismissed.

[5] When I first reviewed the parties' submissions, I was inclined to agree with the defendants. However, as I considered the matter further, and reviewed the applicable case law and the actual record before me, I realized that the evidence in this case was quite different from what was before the court in *Brown*⁷ and *McCracken*⁸. More specifically, I realized that the defendants really had little in the way of "it depends" evidence and the plaintiff, on the other hand, had significant evidence of systemic commonality. I therefore came to the conclusion that the plaintiff has satisfied the commonality as well as the other

² See, for example, *McCracken v. Canadian National Railway*, 2012 ONCA 445, and *Brown v. Canadian Imperial Bank of Commerce*, 2014 ONCA 677.

³ *Rosen v. BMO Nesbitt Burns Inc.*, 2013 ONSC 2144.

⁴ *Baroch v. Canada Cartage*, 2015 ONSC 40. Also see *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443 and *Fresco v. Canadian Bank of Commerce*, 2012 ONCA 444.

⁵ *Brown v. Canadian Imperial Bank of Commerce*, 2012 ONSC 2377, at para. 175.

⁶ Indeed, in *McCracken*, *supra*, note 2, at para. 44, the Court of Appeal agreed that "there is no rule that misclassification cases are automatically incapable of raising common issues." As in every certification motion, it depends on the evidence.

⁷ *Brown*, *supra*, note 2.

⁸ *McCracken*, *supra*, note 2.

requirements under s. 5(1) of the *Class Proceedings Act*⁹ and that the proposed action should be certified as a class proceeding.

[6] The defendants may well prevail on the merits whether by way of summary judgment or a common issues trial. But overall merits are not relevant at certification. On a motion for certification, which is primarily a procedural decision, the plaintiff simply has to show a cause of action and some basis in fact for the four remaining s. 5(1) requirements: an identifiable class, common issues that will advance the litigation, procedural preferability and a suitable representative plaintiff.

[7] In my view, for the reasons set out below, the plaintiff has satisfied each of these requirements. The motion for certification is granted. The common issues, as proposed and certified, are attached in the Appendix.

Outline of decision

[8] To explain why this “archetypal misclassification case” has been certified as a class action on the evidence herein, I will proceed as follows. First, I will describe the defendants’ ‘independent contractor’ sales structure. Next, I will provide a brief overview of how the law decides who is an “employee” and a summary of the key provisions of the *Employment Standards Act* as they apply here. I will then discuss the commonality requirement in detail because this is the core issue on the motion. I will end by considering the certification requirements in s. 5(1) of the CPA.

Background

Just Energy’s sales structure

[9] Just Energy is a “family of companies” that provide electricity and natural gas supply to residential and commercial customers across North America. They commenced operations in Ontario in 1997, initially marketing fixed price natural gas contracts. After the provincial market for electricity was deregulated in 2002, Just Energy began to market electricity in addition to natural gas. Just Energy currently carries on business in six provinces and fifteen American states.

[10] From the time it began operating in Ontario, Just Energy has hired what it believes are independent sales agents to solicit customer contracts for natural gas and electricity. The sales agents work door-to-door and are paid entirely by commission. In 2009 about 95 per cent of the company’s sales revenues came from door-to-door selling. Today, on-

⁹ *Class Proceedings Act*, 1992, S.O. 1992, c.6 (“CPA”).

line sales generate most of the company's revenue and about 21 per cent of the revenue comes from door-to-door selling. Nonetheless, even at 21 per cent, door-to-door selling remains a significant component of the defendants' business. As the company's vice president explained in his affidavit, "Our success has been built one door at a time."

[11] Just Energy has about 130 sales agents working in Ontario as independent contractors ("ICs"). However, because of the high turn-over rate in the door-to-door workforce (close to 18 times a year) the defined class over the four-year class period includes some 7000 former and current sales agents.

[12] Each of these putative class members work or worked in a team or "crew" supervised by a crew coordinator. The crew coordinators are supervised, in turn, by regional distributors who run the regional sales office. The crew coordinators and regional distributors are also IC's and are also paid on commission, drawing "over-rides" from the commissions earned by the door-to-door sales agents under their supervision. The sales agents can become crew coordinators and regional distributors. Some of the latter have been hired by Just Energy as senior employees.

[13] The regional distributors are trained by Just Energy and report to the national distributors employed by the company. Every regional distributor signs an agreement with Just Energy which provides that the sales agents are ICs working for Just Energy, that the regional distributor must recruit, educate, motivate and guide the activities of the ICs, solicit customer contracts using forms and solicitation material approved and supplied by Just Energy, implement the compliance materials provided by Just Energy and generally comply with "all directions" provided by the company. Every sales agent is recruited and hired by Just Energy. All sales agents must wear a Just Energy identification badge.

[14] As an independent energy retailer, Just Energy is regulated by the Ontario Energy Board ("OEB"). Just Energy is responsible for the training, monitoring and conduct of its sales agents and must ensure that all sales agents adhere to internal and external codes of conduct.

The independent contractor agreement

[15] Every sales agent is required to execute an IC agreement. The plaintiff signed his IC agreement in July, 2012 and worked as a sales agent until December, 2013.

[16] In their submissions, the defendants go to great lengths to identify the many provisions in the IC agreement that assert that the sales agents are not employees. Let me simplify this part of the analysis by agreeing with the defendants that, except for clause 2 of the agreement (which requires the sales agents to "follow all instructions or directions" provided by Just Energy), there is no doubt, based on the IC agreement alone, that the defendants intended to hire the sales agents as ICs and not as employees.

[17] The IC agreement provides that the sales agents are generally on their own to do as they please. They must, of course, comply with applicable provincial regulations, such as the codes of conduct promulgated by the OEB and they are required to wear the prescribed identification badge and not engage in any misleading or deceptive sales practices. Otherwise, they can pursue sales as they wish.

[18] According to the IC agreement, there is no requirement to attend the morning meetings at the regional office or wear the defendants' clothing or use the defendants' suggested sales scripts or work door-to-door in any particular location. The IC agreement provides that the sales agents are free to choose when, where and how they will solicit contracts. Thus, I say again, if the IC agreement alone was determinative, it is reasonably clear (except for clause 2) that sales agents were being hired as ICs and not as employees.

[19] But the hiring agreement alone is not determinative.¹⁰

Who is an employee - the “economic realities” test

[20] Little weight is given by courts as to how the parties describe their relationship in the contractual agreement because this is often self-serving.¹¹ Nor does the ESA provide any assistance in this regard. The ESA applies to employees.¹² But “employee” is not defined. Thus, both courts and administrative adjudicators have had to look beyond the labels and examine the “economic realities” of the parties' relationship in practice.¹³ It is in the common law that one finds the factors that must be considered. A leading Canadian text summarizes the key factors as follows:

Canadian courts and administrative tribunals use various formulations of the test for determining employee status, but three elements are common: (1) the employer must exercise a relatively high degree of bureaucratic control over the when and the where of employment; (2) the worker must be economically dependent on the employer; and (3) the worker must not be an entrepreneur operating a business as a going concern but must form part of the employer's business.¹⁴

¹⁰ England, *Individual Employment Law* (2008) at 22.

¹¹ *Ibid.*

¹² ESA, s. 3.

¹³ England, *supra*, note 10, at 22.

¹⁴ *Ibid.*, at 19.

[21] The application of this common law test is invariably fact-specific and more often than not requires a nuanced analysis. Different courts or agencies in different regulatory contexts can come to different conclusions. A worker can simultaneously be an employee under the ESA and an IC under, say, the *Income Tax Act*.¹⁵ Rulings by the CRA or the WSIB or other administrative agencies that the Just Energy sales agents are ICs and not employees are interesting and to a point relevant, but they are not determinative.¹⁶ What counts, and the only thing that counts here, is whether the ICs are employees under the ESA as determined by the application of the common law test set out above.

[22] I pause here to note that of the three primary factors that are typically considered, the one that is the most determinative on the facts herein is the “control” factor, that is, the degree of control over the how, when and where of what’s being sold.

[23] The other two factors are not seriously contested by the defendants:

- There is no serious dispute about the fact that the sales agents are economically dependent on Just Energy. Other than one example of a sales agent in the Ottawa area who also tries to sell LED lights while going door-to-door, the bulk of the evidence is that the sales agents sell only Just Energy products and are economically dependent on the defendants.
- There is also no serious dispute about the fact that the sales agents are not operating stand-alone businesses that service Just Energy as just one of several clients. The evidence is uncontroverted that the sales agents put in full days working exclusively for Just Energy and in doing so form a significant part of the defendants’ business. (Recall the fact that door-to-door sales account for more than 20 per cent of Just Energy’s total revenues.)

[24] Thus, when we come to consider whether there is “some basis in fact” or “some evidence” for the proposed common issues - for example, whether the sales agents are employees rather than ICs - the question will really be whether the plaintiff has presented some evidence that Just Energy exercises a degree of control over the how, where and when of the sales agent’s job – because, as discussed, this is the determinant factor on the facts herein.

[25] I recognize that the Court of Appeal listed five factors in *Belton*¹⁷ not three. The two that were added were these: whether the sales agent is limited exclusively to the

¹⁵ England, *supra*, note 10, at 18 and cases cited therein.

¹⁶ *Ibid.*

¹⁷ *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358 (C.A.)

service of the principal; and the cost and ownership of any tools required for the job. Neither factor, on the facts herein, is significant. In practice, virtually all of the sales agents work exclusively for Just Energy (except for the individual working out of the Ottawa office who also sells LED lights); and both sides agree that no special tools are needed to do door-to-door sales. Thus, the three-factor test outlined above is more than sufficient.

[26] A final point before turning to the applicable ESA provisions. “Control” is not defined either in the ESA or in the case law. One must therefore resort to the definition of “control” that can be found in most on-line and in-print dictionaries: “the power to influence or direct people’s behavior.” Note that “control” does not mean ‘compel at gunpoint’ but simply “*influence or direct*” people’s behavior. I will return to this definition later in these reasons.

The applicable ESA provisions

[27] As already noted, because the ESA does not define “employee” it is necessary to apply the “economic realities” test described above. If the IC sales agents are found to be employees, then (unless they fall within a statutory exemption) they are entitled to a range of benefits and protections as set out in Parts VII to XI of the Act, such as minimum hourly wages, overtime pay and vacation and public holiday pay. These benefits and protections, as already noted, cannot be waived. One cannot contract out of the ESA.¹⁸

[28] A number of exemptions are set out in the legislation. The exemption that applies here is found in s. 2(1)(h) of O. Reg. 285/01:

Exemptions from Parts VII to XI of Act

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed...

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer’s place of business.

¹⁸ ESA, s. 5(1).

[29] In other words, a sales agent who is found to be an “employee” under the common law test is exempted from receiving ESA benefits if she is a sales person who is paid in commission and works outside the employer’s place of business. Thus, because Just Energy’s door-to-door sales agents are outside salespersons they would fall within this exemption¹⁹ and would not be entitled to minimum wage, overtime pay, or vacation or public holiday pay, *unless* they were found to be “route salespersons”. If they come within the “route salesperson” exception to the general exemption, then they would be entitled to minimum wage and related benefits already noted.

[30] The ESA does not define “route salesperson.” However, according to the Act’s interpretation manual and related case law, the key consideration is the degree of control exercised by the employee relative to the employer.²⁰ Whether the “routes” are determined by the employer or the employee, the chance of profit or risk of loss and the level of entrepreneurial activity by the employee are also relevant questions.²¹

[31] The case law follows suit. “The key characteristics driving the conclusion that a person is either a salesperson or a route salesperson are the degree of control the employer exercises over the scheduling and order of sales calls and the degree of entrepreneurial initiative the employee at issue exercises.”²² The adjudicator typically considers such facts as whether the employees were given scripts, were pre-assigned work locations, were driven to the assigned locations, were given direction and coaching on how to perform sales, wore a uniform provided by the employer and were subjected to supervisory phone calls.²³

[32] It is important to remember as we begin to consider whether there is some evidence of commonality for the two key issues – that is, whether there is some evidence that the sales agent is an employee or route salesperson – that the most important evidence for each of these determinations is evidence about the defendants’ degree of control over the how, when and where of what is being sold.

¹⁹ The plaintiff argues that the sales agents do not fall within the exemption because they are not paid commissions with respect to “offers to purchase or sales.” I explain below why this is not a reasonable interpretation of the s. 2(1)(h) provision.

²⁰ *Employment Standards Act 2000 Policy and Interpretation Manual*, at 31-18.2.

²¹ *Ibid.*

²² *VanGrootel v. Advance Beauty Supply Limited*, 2016 CanLII 17209 (OLRB).

²³ *Schiller v. P & L Corporation Ltd*, 2012 CanLII 12611 (OLRB); *Kognitive Marketing Inc. v. Director of Employment Standards*, 2015 CanLII 61657 (OLRB); and *Orlov v. Amato*, 2003 CanLII 2984 (OLRB).

Commonality

[33] As already noted, this motion for certification turns on commonality – whether the proposed common issues can be answered on a class-wide basis. In *Brown and McCracken*, the defendant adduced extensive evidence to show that individualized inquiries were needed (to decide whether the employee was also a manager). And the plaintiff, in turn was unable to adduce sufficient evidence of systemic, class-wide commonality. Here however, the defendants’ “individualized inquiries” evidence was surprisingly weak and the plaintiff’s “systemic commonality” evidence was quite compelling.

[34] The proposed common issues (“PCIs”) are set out in the attached Appendix. The key issues are PCI No. 1 (are the sales agents employees?) and PCI No. 4 (are they route salespersons?). In both cases, as already noted, the most relevant evidence is evidence about the degree of control that Just Energy has over the how, when and where of what is being sold.

[35] I will therefore take some time discussing the s. 5(1)(c) commonality requirement. I will set out the reasons why in my view commonality has been established for PCI Nos. 1 and 4, and I will then go on to consider the other certification requirements and the remaining PCIs.

[36] The law of commonality is well established. Under s. 5(1)(c) of the CPA, the plaintiff must show that his claim raises common issues. In order to satisfy the commonality requirement, the plaintiff only needs to adduce some basis in fact for the existence of the common issue.²⁴ This has been generally interpreted in the case law as involving two-steps - some evidence that the proposed common issue actually exists and some evidence that the proposed issue can be answered in common on a class-wide basis.²⁵ This must be coupled with the over-arching proposition that an issue cannot be common if its resolution is dependent upon individual findings of fact that have to be made with respect to each individual claimant.²⁶

²⁴ *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443, at para. 79 (“...some evidentiary basis indicating that a common issue *exists* beyond a bare assertion in the pleadings.”)

²⁵ *Dine v Biomet*, 2015 ONSC 7050 at paras. 15-19; *affd*, 2016 ONSC 4039 (Div.Ct.).

²⁶ *Fehring v. Sun Media Corp.*, [2002] O.J. No. 4110 (S.C.J.), *affd*, [2003] O.J. No. 3918 (Div. Ct.).

Step one: Some evidence that the “employee” and “route salesperson” issues exist

[37] The first step, some evidence that the proposed common issue actually exists, is typically satisfied with affidavit evidence from the plaintiff about his or her own experience. Here the plaintiff has adduced more than enough evidence to show that PCI Nos. 1 and 4 exist – that is, some evidence that Just Energy controls the how, where and when of the door-to-door sales and that the questions about whether the sales agents are “employees” and “route salespersons” are legitimate questions.

[38] I refer specifically to the evidence presented by sales agents Omarali, Awal, Nazerally and Filipovic. They make the following points. They work twelve-hour days, the morning portion dedicated to meetings and role-playing, and the balance of the day, 12 noon to 9 p.m., to door-to-door selling. They are required to wear Just Energy clothing. They are given sales scripts. They are driven in vans to pre-assigned locations, picked up at day’s end and returned to the regional sales office. They cannot change their pre-assigned work areas without explicit permission. They are reprimanded if they take time off work and sanctioned if they breach internal or external codes of conduct. In short, say the affiants, they are told how, when and where to sell the defendants’ products.

[39] The plaintiff has therefore satisfied the first step of the commonality analysis by showing some basis in fact that the “employee” and “route salesperson” issues exist.

Step two: Some evidence of systemic or class-wide commonality

[40] This is always the more difficult challenge in misclassification cases. The plaintiff may well have some evidence that the PCI exists at least for one or more class members. But now, under the second step of the analysis, he must present some evidence that the PCI is common to the entire class. To do this, the plaintiff typically must find evidence of systemic commonality, ideally in the defendants’ own practices and policies.

[41] Here the plaintiff does just that. He relies not only on the defendants’ own documentation (such as Just Energy’s training materials) but also on the representations made on behalf of the company to the OEB. The plaintiff provides the following evidentiary support for the proposition that the defendants influence or direct (that is, control) the sales agents’ behavior on a class-wide basis.

[42] There is evidence in the company’s own documentation that the completion of the sales agent’s five-part training program is not optional but “must” be completed in its entirety. There is evidence that the morning meetings provide an opportunity “to practice the sales presentation and receive coaching and suggestions from the crew coordinator.” There is evidence that a detailed sales script is provided and that the sales agents are trained in “what must and must not be said at each door.”

[43] There is evidence in the defendants' documentation that the sales agents "will be dropped off by the crew coordinator at the location you will be working in for the day." The sales agents "will work from early afternoon to early evening in one area, contacting customers." There is evidence that they are provided with "do not solicit" lists for the assigned area and must "use only current and approved Just Energy sales and marketing materials."

[44] Customer contracts are finalized by Just Energy. All customer complaints are handled by Just Energy. There is evidence of ongoing quality-control supervision on the part of Just Energy with daily and weekly reports detailing sales agent productivity and customer complaints. The OEB was told by the defendants' legal counsel that "... Just Energy's Ontario operations and compliance teams commit more than 80 person hours per week on quality assurance and monitoring activities."

[45] There is evidence that the sales agents must comply with the company's internal Code of Business Conduct. Just Energy advises its sales agents that it "may discipline and/or terminate its relationship or affiliation with any representative who breaches this Code or related policies." There is evidence that violations of either the OEB or the Just Energy code of conduct can result in "progressive discipline" - from warning letters to monetary penalties, suspensions and terminations.

[46] Last but not least, Clause 2 of the IC agreement (executed by every sales agent) requires every IC to "follow all instructions or directions provided by JEC from time to time." Note the language: all "instructions and directions."

[47] In sum, I have no difficulty concluding that the plaintiff has presented some evidence that the defendants control (that is, influence or direct) the "how, when and where" behavior of the sales agents and do so on a class-wide basis.

Why this is not *Brown* or *McCracken*

[48] In *Brown* and *McCracken*, the plaintiff failed to provide some evidence that the job functions of class members were "sufficiently similar" that the misclassification claim could be resolved without considering the individual circumstances of class members.²⁷ In both cases, the defendants presented extensive evidence showing a "wide variability"²⁸ in the duties and responsibilities of employees having the same job title or

²⁷ *McCracken*, *supra*, note 2, at para. 104.

²⁸ *Brown*, *supra*, note 2, at para. 44.

classification. Some had managerial duties; other did not. The court concluded that individual inquiries were required and thus there was no commonality.²⁹

[49] Here, however, the issue is not whether the job functions of class members are “sufficiently similar” but whether the level or degree of control over the how, when and where of what is being sold is “sufficiently similar” that the misclassification claim can be resolved without considering the individual circumstances of class members.

[50] Here, the defendants did not present any evidence of wide variation in the nature or extent of control over the sales agents. The defendants pointed to the IC agreement which, as I have already noted, is not determinative. They pointed to several broad assertions in their affidavit evidence that the sales agents were under no obligation to attend the morning meetings, were not required to wear Just Energy branded clothing and were “at liberty” to work “at any time and at any location.” But these highly generalized assertions are akin to the “bald, sweeping and conclusory assertions” that were rejected by the Court of Appeal in *McCracken*.³⁰

[51] The defendants also tried to suggest there were variations in job functions and related degrees of control by noting that not all of the class members worked door-to-door selling energy supply contracts to first-time residential customers. Some of the sales agents sometimes worked on residential “renewal” sales and others on commercial customers, both new and renewal.³¹

[52] However, the defendants presented no evidence showing any variation in the level of control relating to the residential renewal sales, or commercial new or renewal sales. There was no evidence, for example, that sales agents selling to commercial customers worked their own hours, used their own sales scripts, wore their own clothing, drove their own cars or finalized their own contracts.

[53] Instead, there is evidence to the contrary. Every sales agent was hired to perform just one job: door-to-door selling. Indeed, Just Energy instructed its recruiters that, “We can't tell people we have multiple positions as multiple positions imply different jobs. We have *one job* with multiple openings.”

²⁹ *McCracken*, *supra*, note 2, at para. 128.

³⁰ *McCracken*, *supra*, note 2, at para. 104.

³¹ I note that some of the sales agents also sold water heaters at one time. However, no further information has been provided about the water heater sales.

[54] Also, the company's VP noted in his affidavit that the sales agents working the residential renewal or the commercial customers were still selling 'door-to-door':

While these sales agents may sell different products to differing customer bases, the one constant is that each and every door-to-door sales person is an Independent Contractor and it is this business model that has remained constant at Just Energy since 1997.

[55] In short, unlike in *Brown* and *McCracken*, here the evidence adduced by the defendants does not show a "wide variability"³² or "lack of core commonality"³³ in the nature or extent of control exercised by the company over its door-to-door sales agents.

[56] I am satisfied that there is some basis in fact for both the existence and the commonality of the key common issues, "employee" and "route salesperson."

Certification requirements

[57] I can now turn to the certification requirements as set out in s. 5(1) of the CPA - cause of action, identifiable class, common issues, preferable procedure and a suitable representative plaintiff. I will consider each of these in turn.

(1) Cause of action

[58] Section 5(1)(a) requires that the pleadings disclose a cause of action. I am satisfied that the pleadings disclose the following causes of action: breach of the ESA, breach of contract and the duty of good faith, negligence, and unjust enrichment.

[59] The defendants' complain that more facts should have been pleaded. However, Rule 25.06(1) requires "a concise statement of the material facts but not the evidence by which those facts are to be proved." In my view, there is nothing deficient or improper about the pleadings.

[60] The defendants also argue that because the pleadings refer to the IC agreement, and the IC agreement is clear that the sales agents were independent contractors, it follows that no cause of action is disclosed in the pleadings. However, as already noted, the contractual agreement is not determinative. The application of the so-called *Belton* factors may well result in a finding that the sales agents were actually employees even though they signed an IC agreement. The primary issue in this analysis is "control" and

³² *Brown, supra*, note 2, at para. 44.

³³ *Ibid.*

that issue is not decided by the content of the IC agreement but the “economic realities” of the parties’ relationship in practice.³⁴ The fact that the pleadings refer to the IC agreement is simply not determinative.

[61] In short, the pleadings disclose the causes of action as noted above. The first requirement under s. 5(1)(a) is satisfied.

(2) Identifiable class

[62] The plaintiff, Haidar Omarali, signed the Just Energy IC agreement in July, 2012 and worked in Toronto as a Just Energy door-to-door sales agent from approximately August 2012 to December 2013. In his first month of employment, the plaintiff worked about 288 hours and made \$956.40 or the equivalent of \$3.32 per hour. The plaintiff’s commission income in 2012 was \$8,851 and in 2013 it was \$23,515.

[63] To satisfy the section 5(1)(b) requirement of the CPA, there must be an identifiable class of two or more persons. The class must also be objectively defined and limited by rational criteria bearing a relationship to the common issues.³⁵ In my view, this second requirement has been satisfied.

[64] The plaintiff proposes the following class definition:

Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.

[65] The defendants say the class definition should be narrowed to exclude claims that are, on the face of the pleadings, statute-barred. The statement of claim was issued on May 4, 2015. Therefore, all claims in respect of services provided prior to May 4, 2013 (or services for which commission payments were made prior to May 4, 2013) are barred by the two-year limitation period set out in the *Limitations Act, 2002*.³⁶ Every class member, say the defendants, would have known upon the receipt of his or her first commission payment, if not sooner, that he or she was not being paid a minimum wage or receiving any other benefits under the ESA. In other words, the class period should begin on May 4, 2013 not January 1, 2012.

³⁴ *Supra*, note 13.

³⁵ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at para. 38.

³⁶ S.O. 2002, c. 24, Sch. B, ss. 4-5.

[66] I am not persuaded that the class should be narrowed at this stage of the proceeding. The defendants may well prevail on the limitations point but more evidence on the issue of reasonable discoverability is needed, particularly where the defendants themselves were continually representing to the sales agents through words and actions (e.g. pay slips) that they were ICs and not employees. On these facts, I prefer to follow the case law as summarized in the leading text on class actions, that “the limitations issue should not be resolved on a pleadings motion or on a motion for certification.”³⁷

[67] The better approach, in my view, is to allow the defendants to add the limitations question as a common issue³⁸ and I have done so herein. On the defendants’ motion, I have added Common Issue 15 to deal with the limitations argument.

[68] Returning then to the s. 5(1)(b) requirement. The class consists of an identifiable group of door-to-door sales agents who are recruited and trained in common, have the same job, and are all classified as independent contractors. The term "sales agent" is an objective term that is used by Just Energy and readily understood by the class members. The class definition is rationally connected to the common issues because the class members were allegedly misclassified as independent contractors in violation of the ESA.

[69] The “identifiable class” requirement is satisfied.

(3) Common issues

[70] I will now consider each of the PCIs in turn and decide whether the PCI should be certified as a common issue.

PCI No.1: Are the class members employees?

[71] PCI No. 1 asks if the class members are employees under the ESA. I have already found in my discussion of the commonality question³⁹ that there is some basis in fact that the issue exists and has class-wide commonality.

[72] PCI No. 1 is certified as a common issue.

³⁷ Winkler, Perell, Kalajdzic and Warner, *The Law of Class Actions in Canada* (2014) at 294.

³⁸ *Ibid.*

³⁹ See above, at paras. 37-47.

PCI Nos. 2, 3 and 9: CPP and EI contributions

[73] PCI Nos. 2 and 3 ask about CPP and EI contributions. PCI No. 9 asks if the defendants failed to make these contributions on behalf of the class members. There is certainly some evidence that the issues exist and, because they focus on the defendants' conduct, they can be answered on a class-wide and common basis.

[74] I suggested to the plaintiff that because the answers to these PCIs were self-evident (obviously no such contributions were made) there was little to be gained in having these questions certified as common issues. But counsel on both sides insisted that there was value in doing so. I will yield to their joint request.

[75] PCI Nos. 2, 3 and 9 are certified as common issues.

PCI No. 4: Are the class members route salespersons?

[76] This is the second core common issue. If the answer to PCI No. 1 is "yes" and the class members are found to be employees, PCI No. 4 asks whether they are exempt from Parts VII, VIII, IX, X and XI of the ESA as outside salespersons or fall within the exception to this exemption as route salespersons? I have already found in my discussion of commonality above,⁴⁰ that there is evidence in the plaintiff's affidavit material that the issue exists and has class-wide commonality.

[77] There is one problem, however, with this common issue as drafted by the plaintiff. The first dozen or so words of PCI No. 4 suggest that s. 2(1)(h) of O. Reg. 285/01 should be interpreted as meaning that "class members are making offers to purchase" rather than the customer.⁴¹ In my view, it is plain from the language in the Regulation that it is the customer that is making the offer to purchase not the sales agent. I therefore agree with the defendants that the opening language in PCI No. 4 should be revised to simply read, "If the answer to (1) is "yes", are the class members ... [etc]."

[78] With this revision, PCI No. 4 is certified as a common issue.

⁴⁰ Recall above at paras.37-47.

⁴¹ The plaintiff's PCI No. 4 reads as follows: "*If the Class Members are making offers to purchase or sales pursuant to s. 2(1)(h) of O. Reg. 285/01, are the class members exempt from Parts VII, VIII, IX, X and XI of the ESA, or do the Class Members fall within the exception to this exemption as route salespersons?*"

PCI No. 5: ESA requirements as express or implied terms

[79] PCI No. 5 asks the following: if the class members are employees and route salespersons, do the ESA requirements regarding minimum pay and related benefits form express or implied terms of the class members' contracts?

[80] Here again, I suggested to the plaintiff that very little would be gained by adding this question to the common issues list. The answer is self-evident. If the ESA applies, and one cannot contract out of the ESA, then it follows that the ESA benefits and protections are payable and these requirements can be characterized as an implied term of the class member employment contracts.

[81] But here again, counsel for both sides requested that this question be added as a common issue. And here again, as I did with PCI Nos. 2, 3 and 9, I acceded to the joint request. I note that a similar issue was certified in *Rosen, Fulawka* and *Fresco*.

[82] PCI No. 5 is certified as a common issue.

PCI Nos. 6 and 7: Breach of contractual and good faith duties

[83] PCI No. 6 asks if the defendants owed contractual duties or a duty of good faith to ensure that the class members paid the minimum wage, that the hours of work were monitored and accurately recorded, that the class members were properly classified and advised of their rights to overtime pay and that they were compensated with vacation and public holiday pay.

[84] There is certainly some evidence that none of this was done and that the questions posed can be answered on a class-wide basis. The basis of the duties alleged are informed by the requirements of the ESA and the Supreme Court's decision in *Bhasin v Hrynew*⁴² that requires honesty in contractual performance. I also note that similar questions have been certified in other employment class actions, including *Rosen, Fulawka, Fresco* and *Baroch*.

[85] PCI No. 7 is certified as a common issue.

PCI No. 8: Failure to comply with ESA requirements

[86] If the class members are found to be employees and route salespersons, PCI No. 8 asks if the defendants failed to pay minimum wage, overtime pay, and vacation and

⁴² *Bhasin v Hrynew*, [2014] S.C.R. 494.

public holiday pay. Here again, the answer is self-evident. But here again, because both sides requested that this issue be added, I will accede to the joint request.

[87] PCI No. 8 is certified as a common issue.

PCI Nos. 10 and 11: Negligence

[88] PCI Nos. 10 and 11 ask, in the alternative, if the various failures alleged under the contractual claim in PCI Nos. 6 and 7 can constitute breaches of a duty of care in negligence and if so, whether the defendants breached such a duty. As with PCI Nos. 6 and 7, there is sufficient evidence for PCI Nos. 10 and 11. I also note that negligence as a common issue was certified in other ESA cases such as *Fresco*, *Fulawka* and *Baroch*.

[89] PCI Nos. 10 and 11 are certified as common issues.

PCI No. 12: Unjust enrichment

[90] PCI No. 12 asks if the defendants were unjustly enriched by failing to make the payments required under the ESA or the contributions required under the CPP and EI legislation.

[91] I agree with the plaintiff that unjust enrichment is well suited to certification as a common issue because the focus is on the defendant's actions and not on the actions of individual class members. An unjust enrichment issue has been certified by the court in numerous employment class actions, such as *Rosen*, *Fulawka*, *Fresco* and *Baroch*.

[92] PCI No. 12 is certified as common issue

PCI No. 13: Aggregate damages

[93] PCI No. 13 asks if the damages sustained by class members should be assessed on an aggregate basis. Aggregate damages under s. 24(1) of the CPA may be certified as a common issue if there is a reasonable likelihood that the damages can be determined without proof by individual class members.

[94] If the class members are found to be employees and route salespersons, the bulk of the loss would consist of the unpaid ESA benefits, in particular minimum hourly wages and overtime pay. But the defendants kept no records of hours worked. Therefore, these losses cannot be determined without proof by individual class members. Aggregate damages are not appropriate.

[95] Further, to properly assess each sales agent's "loss" the court would likely have to subtract the 'commissions received' amount from the 'ESA benefits that should have been paid' amount – again, requiring individualized inquiries.

[96] I therefore conclude that for the bulk of the damages sustained, an aggregate damages common issue should not be certified. However, I recognize that the Court of Appeal in *Good*⁴³ concluded that aggregate damages can be certified as a common issue where it can be established that the class members are entitled to “a base amount” that does not depend on individualized proof.⁴⁴ Here, says the plaintiff, the amounts owing for CPP and EI contributions can be determined by reviewing the income records in the defendants’ possession.

[97] I accept the plaintiff’s submission about the CPP and EI amounts. But this action is not about CPP and EI. So, on balance, I prefer to leave the entire aggregate damages question to the common issues trial judge who will be able to decide on his or her own whether aggregate damages can or should be awarded.

[98] PCI No. 13 is not certified as a common issue.

PCI No. 14: Punitive damages

[99] PCI No. 14 asks if the class members are entitled to an award of aggravated, exemplary or punitive damages based on the defendants’ conduct.

[100] A punitive damages common issue (asking about entitlement rather than amount⁴⁵) is often certified because the focus is on the defendants’ conduct and thus the commonality requirement is satisfied. But one still needs to adduce some evidence that the issue exists - that there is conduct that would justify a punitive damages question.⁴⁶

[101] Punitive damages are awarded when the defendant’s wrongful acts are “harsh, vindictive, reprehensible and malicious”, indeed “so malicious and outrageous that they are deserving of punishment on their own.”⁴⁷ There is no evidence in the record that the defendants’ conduct in classifying and hiring sales agents as ICs rather than as employees was in any way “harsh, vindictive, reprehensible and malicious.”

⁴³ *Good v. Toronto (Police Services Board)*, 2016 ONCA 250.

⁴⁴ *Ibid.*, at para. 75.

⁴⁵ See the discussion in *Dine v Biomet*, *supra*, note 25, at paras. 58-60.

⁴⁶ *Ibid.*, at para. 55.

⁴⁷ See the case law as discussed most recently by the Court of Appeal in *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, 2016 ONCA 520 at paras. 110-112.

[102] Instead, the evidence shows that over the years the ‘independent contractor’ issue was adjudicated before various administrative agencies including the CRA, the WSIB, and on at least one occasion, before an employment officer of the ESA. With each decision the defendants were reassured that their sales agents were indeed ICs not employees. This does not mean that the same result will necessarily follow in this case. But it does mean that the defendants’ actions in the design and implementation of their IC sales structure cannot be characterized as “so malicious and outrageous that they are deserving of punishment on their own.” In any event, and to repeat, there is no evidence of conduct that would support a punitive damages issue.

[103] PCI No. 14 is not certified as a common issue.

PCI No. 15: Limitations period

[104] As I have already explained in my discussion of the “identifiable class” requirement, I will add and certify a common issue dealing with the limitations question. There is some evidence that the class definition should be narrowed to confine the class period to the two years preceding the issuance of the statement of claim. The resolution of the limitations issue will have a common impact on all those affected.

[105] I will therefore add and certify the following issue:

Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

[106] This completes my analysis of the proposed common issues. In sum, for the reasons set out above, PCI Nos. 1 to 12 are certified, PCI Nos. 13 and 14 are not certified, and a new PCI No. 15 has been added.

(4) Preferability

[107] Section 5(1)(d) of the CPA requires that a class proceeding be the preferable procedure for the resolution of the common issues in the context of the claim as a whole.⁴⁸ Preferability is meant to capture two ideas: (i) whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and (ii)

⁴⁸ *Pearson v. Inco Ltd.* (2005), 78 O.R. (3d) 641 (C.A.) at para. 67.

whether a class proceeding would be preferable to other procedures such as joinder, test cases, consolidation or any other means of resolving the dispute.⁴⁹

[108] Here, in my view, a class proceeding is the preferable procedure and would provide a fair, efficient and manageable method of advancing the claim. The individual claims of the class members may be small and not warrant the commencement of individual lawsuits. A common determination in a class proceeding about their employment status will significantly advance the litigation and provide meaningful access to justice some 7000 class members.

[109] One would still need individual damage assessments if the common issues are resolved in favour of the class members. However, this does not detract from the overall preferability of the class action. In any event, s. 6(1) of the CPA makes clear that the court shall not refuse certification just because individual damage assessments will be required after the conclusion of the common issues trial.

(5) Suitable representative plaintiff

[110] Finally, under s. 5(1)(e) of the CPA, the court must be satisfied that there is a representative plaintiff who (i) will fairly and adequately represent the interests of the class, (ii) has produced a workable litigation plan and (iii) does not have a conflict of interest with any of the other class members. The proposed representative need not be 'typical' of the class, but must be 'adequate' in the sense that he or she will vigorously prosecute the claim.⁵⁰

[111] Mr. Omarali has proven to be a conscientious representative plaintiff by retaining and instructing class counsel, reviewing the evidence filed to date, providing his own evidence, being cross-examined and attending in court for the certification hearing. He shares interests in common with the other class members and has produced a workable litigation plan. He is more than suitable as a representative plaintiff.

⁴⁹ *Hollick v. Metropolitan Toronto (Municipality)*, 2001 SCC 68 at paras. 28-31; *Fischer v. IG Investment Management Ltd.*, 2013 SCC 69, at paras. 16 and 22.

⁵⁰ *Campbell v. Flexwatt*, 98 B.C.A.C. 22 (C.A.) at paras. 75-76, leave to appeal to S.C.C. refused [1998] S.C.C.A. No. 13.


Conclusion

[112] For the reasons set out above, I find that the requirements in s. 5(1) of the CPA have been satisfied. The proposed action is certified as a class proceeding.⁵¹

[113] As noted in the attached Appendix, proposed common issues Nos. 1 to 12 are certified; Nos. 13 and 14 are not certified; and a new common issue dealing with limitations has been added. I would ask that counsel prepare a draft Order in the form contemplated by s. 8 of the CPA.

[114] If the parties are unable to agree on the costs, I would be pleased to receive brief written submissions from the plaintiff within 14 days and from the defendants within 14 days thereafter. Counsel are urged to review my costs awards in previous certification cases.⁵²

[115] My thanks to counsel for their co-operation and for their additional written submissions.



Belobaba J.

Date: July 27, 2016

⁵¹ I note that a similar class action was certified in 2013 by the U.S. District Court for the Northern District of Ohio: see, *Hurt et al v. Commerce Energy Inc.*, (Case No. 1:12-CV-00758). The defendant Commerce Energy is a Just Energy company. I also note that when another similar class action was litigated on the merits, the U.S. District Court for the Northern District of California granted Just Energy's motion for summary judgment finding that the IC's were "outside sales persons" under the California Labour Code and thus fell within the exemption: see *Dailey v. Just Energy Marketing Corp.*, (Case No. 14-CV-02012-HSG).

⁵² See any of *Dugal v Manulife Financial*, 2013 ONSC 4083; *Rosen v BMO Nesbitt Burns*, 2013 ONSC 2144; *Crisante v DePuy Orthopaedics*, 2013 ONSC 5186; *Brown v. Canada (Attorney General)* 2013 ONSC 5637; or *Sankar v Bell Mobility*, 2013 ONSC 5916.

Appendix

Revised Proposed Common Issues

[Issues 1 to 12 are certified. Issues 13 and 14 are not certified. Issue 15 dealing with Limitation Periods has been added and certified.]

Statutory Claim

1. Are the Class Members “employees” of the Defendants pursuant to the *Employment Standards Act, 2000* (“ESA”)?
2. If the answer to (1) is “yes”, are the Class Members in “pensionable employment” of the Defendants pursuant to the *Canada Pension Plan* (“CPP”)?
3. If the answer to (1) is “yes”, are the Class Members in “insurable employment” of the Defendants pursuant to the *Employment Insurance Act* (“EI”)?
4. If the answer to (1) is “yes”, are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
5. If the answers to (1) and (4) are “yes”, do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

Breach of Contract

6. If the answers to questions (1) and (4) are “yes”, do the Defendants owe contractual duties and/or a duty of good faith to:
 - a. Ensure that the Class Members were compensated with the minimum wage?
 - b. Ensure that the Class Members’ hours of work were monitored and accurately recorded?
 - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
 - d. Ensure that the Class Members were compensated with vacation pay?
 - e. Ensure that the Class Members were compensated with and public holiday and premium pay?

7. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
8. If the answers to (1) and (4) are “yes”, did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
9. If the answers to (2) and/or (3) are “yes”, did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Negligence

10. Alternatively, did the Defendant owe a duty of care to the Class Members to:
 - a. ensure that Class Members are properly classified as employees;
 - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
 - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
 - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.
11. Did the Defendants breach any of the duties of care found to exist above? If so, how?

Unjust Enrichment

12. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Aggregate Damages

13. If the Defendants breached the *ESA*, or its contracts with Class Members, or its duties of good faith or duties of care owed to the Class Members, or was unjustly enriched, should damages be assessed on an aggregate basis?

Punitive Damages

14. Are the Class Members entitled to an award of aggravated, exemplary, or punitive damages based on the Defendants' conduct?

Limitation Period Issue (added at the request of the defendants)

15. Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

*THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell". The signature is written in a cursive style with a small dot at the end of the last letter.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Court File No. CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) THURSDAY, THE 27TH
)
 MR. JUSTICE BELOBABA) DAY OF JULY, 2016

B E T W E E N:

Haidar Omarali

Plaintiff

- and -

JUST ENERGY GROUP INC., JUST ENERGY CORP.
and JUST ENERGY ONTARIO L.P.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION for certification brought by the Plaintiff was initially heard on June 21, 2016 at Osgoode Hall, 130 Queen St. West, Toronto, Ontario, and was continued on June 28, 2016 at 361 University Ave., Toronto, Ontario.

ON READING the motion records, the facts of the parties, the revised list of common issues, and the subsequent written submissions of the parties, and all other written submissions and materials filed by the parties, and on hearing submissions of counsel,

1. THIS COURT ORDERS that this action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

Class Definition

2. THIS COURT ORDERS AND DECLARES that the Class Members are defined as:

Any person, since 2012, who worked or continues to work for Just Energy in Ontario as a Sales Agent pursuant to an independent contractor agreement.

Common Issues

3. THIS COURT ORDERS AND DECLARES that the common issues be and hereby are certified as:

Statutory Claim

- (1) Are the Class Members "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA")?
- (2) If the answer to (1) is "yes", are the Class Members in "pensionable employment" of the Defendants pursuant to the *Canada Pension Plan* ("CPP")?
- (3) If the answer to (1) is "yes", are the Class Members in "insurable employment" of the Defendants pursuant to the *Employment Insurance Act* ("EI")?
- (4) If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
- (5) If the answers to (1) and (4) are "yes", do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

Breach of Contract

- (6) If the answers to questions (1) and (4) are "yes", do the Defendants owe contractual duties and/or a duty of good faith to:

- a. Ensure that the Class Members were compensated with the minimum wage?
 - b. Ensure that the Class Members' hours of work were monitored and accurately recorded?
 - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
 - d. Ensure that the Class Members were compensated with vacation pay?
 - e. Ensure that the Class Members were compensated with public holiday and premium pay?
- (7) Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
- (8) If the answers to (1) and (4) are "yes", did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?
- (9) If the answers to (2) and/or (3) are "yes", did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Negligence

- (10) Alternatively, did the Defendants owe a duty of care to the Class Members to:
- a. ensure that Class Members are properly classified as employees;
 - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
 - c. ensure that the Class Members hours of work are monitored and accurately recorded; and

d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.

- (11) Did the Defendants breach any of the duties of care found to exist above? If so, how?

Unjust Enrichment

- (12) Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Limitation Period Issue

- (13) Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

Representative Plaintiff and Class Counsel

4. THIS COURT ORDERS AND DECLARES that Haidar Omarali be and hereby is appointed as the representative Plaintiff for the Class and that Koskie Minsky LLP be and hereby are appointed as class counsel ("Class Counsel").

Relief Sought and Nature of Claims Asserted

5. THIS COURT ORDERS AND DECLARES that the Class seeks damages, declarations and orders related to claims for breach of the *ESA*, breach of CPP and EI, breach of contract, breach of the duty of good faith, negligence, and unjust enrichment.

Notice of Certification

6. THIS COURT ORDERS that the form of notice of this certification Order, the manner of giving notice and all other related matters shall be determined by further order of this Court.

Costs

7. **THIS COURT ORDERS** that the costs of this motion are payable by the Defendants within thirty (30) days of this order becoming final, to the Plaintiff in the all-inclusive amount of \$135,000.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.

SEP 20 2016

PER / PAR:



KM-2306191v3

Haidar Omarali
Plaintiff

JUST ENERGY GROUP INC., et al.
Defendant

and

Court File No.: CV-15-527493-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

ORDER

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

David Rosenfeld LSCU #51143A
Tel: 416.595.2117
Fax: 416.204.2889

Jody Brown LSUC #58844D
Tel: 416.595.2117
Fax: 416.204.2889

Lawyers for the Plaintiff

*THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Role Description: Sales Representative/Energy Advisor

POSITION OVERVIEW

The Energy Advisor is responsible for door-to-door sales of Just Energy products, services and offerings. They will demonstrate the required knowledge and sales techniques necessary to successfully interact with customers.

Energy Advisors will strive to achieve daily and weekly targets. A successful candidate will execute daily and weekly routing plans.

Energy Advisors must drive sales, be performance driven and dedicated to achieving goals in order to achieve success at Just Energy while receiving little to no negative customer/consumer feedback.

MINIMUM REQUIREMENTS

Education	Highschool diploma or equivalent
Experience	Direct sales experience preferred however not required however experience with customers in any platform; i.e. retail, customer service, hospitality is an asset
Knowledge and Skills	Strong verbal skills and the ability to be coachable and take direction
Other	Applicants must be authorized to work in the country where position resides

JOB LEVEL

Level	Level 1
-------	---------

ORGANIZATION STRUCTURE

justenergy.com

Function	Sales
----------	-------

REPORTING RELATIONSHIPS

Reports To	Team Leader
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AUTHORITIES AND KEY DECISION MAKING

- Individuals must use judgment to determine appropriate product and service offerings and presentation techniques during interaction with clients
- Individuals must be able to determine when to disengage or avoid customer interactions to prevent and mitigate against negative consumer feedback

WORKING CONDITIONS

- The Energy Advisor will be required to work outside ~ 90% of the time and will be exposed to the elements including at times unpredictable inclement weather; must dress appropriately for weather conditions with Just Energy provided apparel
- Will need to walk ~ 90% of the time, and in transit ~ 10% of the time in a vehicle, travelling to the assigned local territory marketing area
- The job requires local travel ~ 90% of the time into a variety of geographic areas that may have unpredictable environmental conditions; may be required to travel outside of the assigned territory ~10% of the time, including overnight stays
- Will be required to deal with a variety of prospective and current customers and may at times be subject to difficult situations with customers, which may lead to stressful working conditions.
- The Energy Advisor will be required to adapt thinking and verbal responses quickly to respond to customer objections; this requires considerable mental processing and verbalization to influence and communicate and utilization of Just Energy approved sales scripts and objection handling documents
- Must be able to maintain composure, professionalism, and focus while interacting with confrontational customers
- Responsible for achieving positive consumer interactions and a high level of consumer satisfaction in their interactions with consumers
- Job environment is subject to change and candidates must be able to adapt and support changes

May be required to work overtime as defined by the needs of the office and production levels

- The incumbent will be required to work evenings and, weekends (Saturday or Sunday), and holidays throughout the year as defined by the needs of the office

CORE COMPETENCIES

Competency Name	Competency Definition
JE Products, Policies & Procedures Knowledge	<ul style="list-style-type: none"> • Trained For
Energy Market Knowledge	<ul style="list-style-type: none"> • Trained For
Sales Routing and Call Planning	<ul style="list-style-type: none"> • Trained For
Professionalism	<ul style="list-style-type: none"> • Conducts themselves in a professional manner at all times • Approaches work with vigor, enthusiasm and engagement • Is open to feedback • Remains motivated and positive, even when facing difficult situations
Rapport Building	<ul style="list-style-type: none"> • Interacts with customers in a polite, polished and courteous manner • Demonstrates patience and sensitivity when engaging customers • Establishes a relaxed and friendly atmosphere when interacting with customers • Creates credibility and trust through confidence and their interaction with the customer
Customer Needs and Opportunity Assessment	<ul style="list-style-type: none"> • Uses standardized surveying questions to discover basic facts about the buyer (e.g. current energy usage and needs) • Seeks to prequalify customer and uncover decision process (e.g. people involved in decision process) • Establishes two-way communication by asking appropriate questions and listening carefully to the customer's responses
Communication of Value Proposition	<ul style="list-style-type: none"> • Clearly and effectively communicates product value proposition to customers • Presents product value proposition in a way that allows the customer to favorably differentiate the value of their offer from competition

Advancing Sales	<ul style="list-style-type: none"> • Seeks to gain better understanding of objections (i.e. clarifies or allows buyer to clarify the objection) • Maintains composure with confrontational customers • Employs standard approach to overcome different types of objections • Demonstrates basic closing techniques, such as summary-of-benefits closing technique
-----------------	---

ADDITIONAL HIRING CHARACTERISTICS – INTERNAL USE ONLY

*The following skills are to inform hiring and are in addition to the Core Competencies. This is for **Internal Use Only**.*

Motivation	<ul style="list-style-type: none"> • Highly motivated and driven • Overcomes obstacles and remains focused on the achieving performance targets
Perseverance	<ul style="list-style-type: none"> • Remains positive in the face of rejection and challenging situations; does not get discouraged • Employs stress management techniques and does not let stress effect job performance

Promotion Criteria to Team Leader

The followings are guides to identify strong performance which could ultimately lead to a promotion to the Team Leader role

Promotion Identification	<ul style="list-style-type: none"> • Potential promotions are identified by the Territory Sales Manager, Field Sales Manager and Regional Manager of Field Operations • There must be scale to promote
Requirements for Potential Promotion	<ul style="list-style-type: none"> • Office must be at critical mass for promotion. For example, promotion must be considered based on the demotion of a currently poor performing Team Leader or RSO has grown in size based on head count. • Personal compliance ratio of less than 0.5% (half of one percent) off of personal sales based on YTD or rolling 12 month statistics. • Cannot go from Energy Advisor to Field Sales Manager. Must be promoted to Team Leader role first unless the promotion falls into the categories listed below. • Minimum of three month tenure in Energy Advisor role with only one record of an Performance Improvement Plan (production) or Corrective Action Plan (behaviour) based on YTD or rolling 12 onth

	<p>statistics. Exceptions to the tenure can come from 1) previous sales experience leading a team of sales people; 2) RSO is in start up phase (brand new office) and/or; 3) immediate increase in actual performance above set standards and expectations.</p> <ul style="list-style-type: none"> • Passing of Just Energy's Corporate fleet policy and drug test (failing the test may not result in promotion being offered however they will not be able to drive a Just Energy van or any car with Just Energy employees to and from the field). • Must have a strong track record of adhering to all Just Energy policies and procedures, • Must have referred a minimum of five individuals to Just Energy
Income Baseline as Energy Advisor	<ul style="list-style-type: none"> • Hourly wages with overtime if eligible for overtime based on sales production. • Commissions on personal sales for Effective Contracts. • Ability to participate in Just Energy's Employee Benefit program, • Ability to participate in Just Energy's recognition and reward program
Promotion Bonus to Incumbent Team Leader	<ul style="list-style-type: none"> • Team Leader to receive \$2,000 bonus for every individual from their team that is promoted to a Team Leader role. \$500 upon successful acceptance of promotion and the remaining \$1,500 after six months of successful role transition to the requirements listed on this document or if promoted to Field Sales Manager.

*THIS IS EXHIBIT "F" REFERRED TO IN THE
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AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is written in a cursive style and appears to read "D. Rosewell".

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

To: Richard Teixeira[RTeixeira@justenergy.com]
From: Rosalba Gullo
Sent: Fri 04/11/2016 12:26:03 PM
Importance: High
Subject: FW: Ontario Employee Conversion
MAIL_RECEIVED: Fri 04/11/2016 12:26:04 PM

Thx.

Rosalba

(ext.73555)

From: Ryan Parnell
Sent: Friday, November 04, 2016 12:24 PM
To: Rosalba Gullo <rgullo@justenergy.com>; Ravi Maharaj <rmaharaj@justenergy.com>
Cc: Arturo Florcruz <aflorcruz@justenergy.com>
Subject: FW: Ontario Employee Conversion
Importance: High

Hi Rosie,

Do you know who in HR will be supporting us in Ontario?

On Wednesday next week, I am planning to host a recruiter call to tell them about the new model as we will begin interviews 11/12.

Are you able to or can you suggest who can speak to the below:

- Benefit overview (for speaking purposes)

- Employee Package changes
- Hour tracking

Would you be able to join my call this week with the recruiters for a quick briefing on any admin responsibilities that may be changing as well as an Employee Package/HR benefit overview?

The purpose of the call is not training...but more an FYI so the recruiters can incorporate this into their understanding of the new world on Nov 28.

Please let me know

RP

From: Ryan Parnell
Sent: Wednesday, November 02, 2016 1:33 PM
To: Ravi Maharaj; Arturo Florcruz; Richard Teixeira; Rosalba Gullo; Mujeeb Jafferi
Subject: Ontario Employee Conversion
Importance: High

Hello Team,

I'm sending this note to confirm that we are moving full steam ahead on the recruiter side with a Nov 28, 2016 Ontario Employee conversion. What's unique about this conversion is we are converting 5 offices at the same time....so a lot of grounds to cover.

Here are some quick notes / items to confirm:

- ☐☐☐☐☐☐☐☐ Offices converting to Employee

- Oshawa
- Fairview
- Ottawa
- Toronto
- Kitchener

- ☐☐☐☐☐☐☐☐ Offices remaining Just Energy IC/Commercial – continue to keep IC commercial ads

- Islington
- Yorkland
- Cambridge

ADS and EMPLOYEE TRAINING FOR RECRUITERS

- ☐☐☐☐☐☐☐☐ ON online Ads will be changed on Nov 10, 2016 to employee

- We will be conducting 2 weeks of employee interviews leading into Nov 28, 2016 where every new hire will start
- Do you want to introduce a CAP on new hires per office? Let me know....so we can onboard accordingly. My plan is to have 5-10-15 people starting on Nov, 28th in each office. (interviewing for a Nov 28 start)

- ☐☐☐☐☐☐☐☐ Employee Flyers and recruiting materials will be shared with all recruiters prior to Nov 10 for promotion/interviews

•□□□□□□□ RP to host ON Recruiter Employee Training call Wednesday Nov 9 to overview on the below – *interviews will start 11/11 or 11/14.*

- Earning model – hour + overtime + commission + bonus etc (Ravi to confirm ON offer prior to Wed Nov 9)
 - Paid training
 - Performance quotas / standards
- HR brief – Will ask HR or Rosie to join/support me on the call
 - Employee packages
 - Benefit offer – so recruiters know how to promote this during interviews
- Admin – overview on hourly tracking – will ask Rosie to join/support me on the call
 - Admin training to be conducted by Rosie/Ravi?

To summarize, I will need to train the recruiters on everything they will need to know Wednesday Nov 9, prior to conducting employee interviews. We will start conducting employee interviews as early as 11/11 or 11/14 for a Nov 28th start date (first training class),

I hope this framework makes sense – I'm excited to work with Ravi/Rosie/HR to present the employee offer to our recruiters next week so we can begin to book interviews in for a Nov 28th hire date!

Thank you,

RP



T 905.670.4440 ext: 71346 | C 416.993.3626

6345 Dixie Road, Suite 200, Mississauga, Ontario, L5T 2E6
E-mail mparnell@justenergy.com | Web justenergy.com



Just Energy is a green, clean company. Be part of our mission. Think before you ink.

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AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Court File No. CV-15-527493-00CP
ONTARIO
SUPERIOR COURT OF JUSTICE

SC/ep

B E T W E E N:

Haidar Omarali

Plaintiff

- and -

JUST ENERGY GROUP INC., JUST ENERGY CORP. and
JUST ENERGY ONTARIO L.P.

Defendants

This is the Continued Examination for Discovery of RAVI MAHARAJ, produced and examined on behalf of the corporate defendant, Just Energy Group Inc., held at the Offices of VICTORY VERBATIM REPORTING SERVICES, Suite 900, 222 Bay Street, Ernst & Young Tower, Toronto-Dominion Centre, Toronto, Ontario, on the 25th day of January, 2018.

A P P E A R A N C E S:

DAVID ROSENFELD	}	
JODY BROWN	}	
BRITTANY TOVEE	}	---
PAUL MARTIN	}	for the Plaintiff
ANASTASIA REKLITIS	}	
MELISSA LOSCO (law clerk)	}	---
		for the Defendants

1 an email chain and I'd like to go down to the bottom
2 of the chain to an email dated November 2nd, 2016,
3 from Ryan Parnell to yourself amongst others talking
4 about Ontario employee conversion.

5 MR. MARTIN: Yes, I've got that.
6

7 BY MR. ROSENFELD:

8 1134. Q. So, this is addressing the employee
9 conversion in Ontario for Just Energy, is that
10 right?

11 A. Yes. Did you want me to read it
12 real quick or...

13 1135. Q. Yes, please.

14 A. Okay.

15 1136. Q. Great. And do you recall when this
16 process started, to convert employees...convert
17 contractors to employees at Just Energy?

18 A. For Ontario?

19 1137. Q. Yes.

20 A. I think in and around November of
21 2016 is when the conversion occurred.

22 1138. Q. Right, and you said in Ontario.
23 Have they converted everywhere else...in the other
24 provinces or territories that they operate?

25 MR. MARTIN: Do you know?

1 THE DEPONENT: In Canada or the U.S?

2

3 BY MR. ROSENFELD:

4 1139. Q. In Canada or the United States.

5 A. I think the residential we have

6 converted in the U.S.

8

9 BY MR. ROSENFELD:

10 1190. Q. Okay. Can we go to JE00004714? And
11 this is a document of role description sales
12 representative/energy advisor.

13 MR. MARTIN: Yes, we have that.

14

15 BY MR. ROSENFELD:

16 1191. Q. Do you just want to take a moment to
17 take a look at that document, please? Thank you.

18 A. Okay.

19 1192. Q. And so, can you tell me what this
20 is?

21 A. My understanding is this is
22 essentially the role description for the employee
23 based energy advisor...

24 1193. Q. Have you seen this before?

25 A. That, I can tell you, this is...yes.

1 Typically when I look at it that's what I understand
2 it to be. I've seen an energy advisor job
3 description, essentially.

4 1194. Q. Great. And is this the same role as
5 the...would be the door-to-door sales agent, that
6 low level independent contractor, under the
7 independent contractor structure?

8 A. If I had to compare the roles,
9 correct.

10 1195. Q. Yes. And would the...sorry. On
11 page two it talks about the working conditions.
12 Would this be a similar description of what the
13 independent contractor sales agents conditions were
14 while they were operating under independent
15 contractor agreements?

16 MR. MARTIN: I think it goes down to the
17 next page too.

18 THE DEPONENT: Okay. Sorry, what was
19 the question?
20

21 BY MR. ROSENFELD:

22 1196. Q. Is that an accurate description of
23 the conditions that the sales agents were operating
24 under while they were independent contractors?

25 A. In my opinion this is the working

*THIS IS EXHIBIT "H" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Rosenfeld", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

CITATION: Omarali v. Just Energy, 2019 ONSC 3734
COURT FILE NO.: CV-15-527493-CP
DATE: 20190621

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Haidar Omarali / Plaintiff

AND:

Just Energy Group Inc., Just Energy Corp., and Just Energy Ontario LP /
Defendants

BEFORE: Justice Edward P. Belobaba

COUNSEL: *David Rosenfeld and Garth Myers* for the Plaintiff / Moving Party

Paul J. Martin and Anastasia Reklitis for the Defendants / Responding
Parties

HEARD: June 11 and 12, 2019

Proceeding under the *Class Proceedings Act, 1992*

Summary Judgment Decision

[1] A motion for summary judgment on certified common issues that ask in essence whether the defendants' sales agents were independent contractors or employees will not always work.

[2] If there are serious credibility issues, or the court finds that the evidence needs substantial clarification, and recourse to a "mini-trial" is precluded by a provision in the *Class Proceedings Act*,¹ the motion for summary judgment may well be dismissed.

[3] That's what happened here.

¹ *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

Background

[4] In this class action, the plaintiff alleged that the defendants' 8000 sales agents were misclassified - that they were not independent contractors but employees and were therefore entitled to the benefits and protections of the *Employment Standards Act*² such as minimum wage, overtime pay, and vacation and public holiday pay. The defendants argued that the determination whether the defendants' sales agents were independent contractors or employees could only be made on an individualized basis. Because commonality could not be established on the evidence before the court, argued the defendants, the matter could not proceed as a class action and the motion for certification should be dismissed.

[5] In 2016, I certified this action as a class proceeding.³ I found there was some evidence of commonality for each of the 13 certified common issues that are attached in the Appendix.

The motion for summary judgment

[6] The plaintiffs now move for summary judgment on the 13 common issues. The key issues are Common Issue Nos. 1 and 4:

- CI No. 1: Are the Class Members "employees" of the Defendants pursuant to the *Employment Standards Act, 2000* ("ESA")?
- CI No. 4: If the answer to (1) is "yes", are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?

[7] The outside sales agent exemption and the route sales person exception are set out in s. 2(1)(h) of O. Reg. 285/01:

Exemptions from Parts VII to XI of Act

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed....

² *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("ESA").

³ *Omarali v. Just Energy*, 2016 ONSC 4094.

- Page 3 -

(h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

(ii) are normally made away from the employer's place of business.

[8] In other words, if a worker is found to be an employee, he is entitled to the range of benefits and protections set out in Parts VII to XI of the Act, such as minimum wage, overtime pay, and vacation and public holiday pay. However, if the employee is an outside door to door sales agent who works on commission, he falls within the exemption and the ESA benefits and protections are not available, *unless* the outside sales agent is a "route salesperson." In other words, on the facts of this case, the ESA provisions in question only apply if the defendants' door to door sales agents are both employees *and* route salespersons.

[9] At the certification stage, I found there was some basis in fact for each of the 13 certified common issues, including the all-important employee and route salesperson determinations. But that was at the certification stage. We are now at the merits stage where the overall evidence may well point to a very different determination.

[10] The plaintiff says the evidence on this summary judgment motion requires a finding that the defendants' sales agents were employees and route salespersons.⁴ The defendants refer to their evidence and argue that the sales agents were not employees but independent contractors and if they were employees, they cannot reasonably be characterized as route salespersons – and instead fall within the outdoor sales agent exemption.

The "control" factor

[11] Neither "employee" nor "route salesperson" is defined in the ESA – hence the need to rely on judicial interpretation. The case law is clear that one of the factors in the

⁴ I say "were" because the defendants' residential door to door sales practices ended five years into the class period. As of January 1, 2017, Just Energy no longer engages individuals for door-to-door energy solicitation as a result of legislative amendments to the *Energy Consumer Protection Act*, 2009, S.O. 2010, c. 8, which came into force on that date. These amendments provide, in part, that the sale or offer of sale of electricity or natural gas to a consumer in person at the consumer's home is prohibited, and that such sales or offers of sale cannot be based on a commission or value of volume sales basis.

analysis that decides both the “employee” and “route sales person” determinations is the defendants’ degree of control over the how, where and when of what is being sold.⁵

[12] The courts have identified five or six factors that are relevant to the “employee” determination.⁶ The central question is “whether the person who has been engaged to perform the services is performing them as a person in business on his own account”⁷ – in other words, “whose business is it?”⁸ The various factors may be weighed differently depending on the evidence before the court, but as the Supreme Court noted in *Sagaz*, “the level of control the employer has over the worker’s activities will always be a factor.”⁹

[13] The focus on the level of control over the how, when and where of what is being sold – important as it is for deciding the threshold “employee” question - is even more important in deciding whether the employee/outside sales agent is a “route sales person.” The evidence that is relevant to the “route salesperson” determination is evidence about the degree of control exercised by the employer over the selection of the marketing locations, whether the employees are driven to and from the pre-assigned locations, are given sales scripts or direction or coaching on how to perform sales calls, wear uniforms provided by the employer and are generally subject to employer monitoring or supervision.¹⁰

[14] In short, evidence about the level of control that is exercised by the employer is always relevant (to some degree) when deciding the “employee” question and pretty much determinative when deciding whether the employee/outside sales agent is a “route salesperson.”

⁵ *Omarali*, *supra*, note 3, at para. 32.

⁶ 671122 *Ontario Ltd. v. Sagaz Industries Canada*, 2001 SCC 59, at para. 47. The Supreme Court set out a list of non-exhaustive factors that should be considered: (1) the level of control the employer has over the worker’s activities; (2) whether the worker provides his or her own equipment; (3) whether the worker hires his or her own helpers; (4) the degree of financial risk taken by the worker; (5) the degree of responsibility for investment and management held by the worker; and (6) the worker’s opportunity for profit in the performance of his or her risks. Also see *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358 (C.A.) at para. 11 and *Braiden v. La-Z-Boy Canada Limited*, 2008 ONCA 464 at paras. 33-35

⁷ *Sagaz*, *supra*, note 6, at para. 47.

⁸ *Braiden*, *supra*, note 6, at para. 34.

⁹ *Sagaz*, *supra*, note 6, at para. 47.

¹⁰ *Omarali*, *supra*, note 3, at para. 31 and case law cited therein.

[15] Both sides, not surprisingly, provided compelling affidavit evidence about the level of control over the how, when and where Just Energy products were sold by the class member sales agents – the plaintiffs saying the level of control was extensive; the defendants the exact opposite.

[16] In the certification decision, I noted that “control” is conventionally defined as “the power to influence or direct people’s behaviour.”¹¹ On this motion, counsel on both sides focused more on the “power to direct” the sales agents’ behaviour than on “the power to influence” the sales agents’ behaviour. (This may change as the case proceeds.)

Mini-trial or trial?

[17] The difficulty that I face on this motion for summary judgment is that there is diametrically conflicting evidence about the level of control over the how, when and where question. The plaintiff says I can decide the common issues more directly by simply considering the “organizational structure” evidence and finding that Just Energy’s organizational structure is “inconsistent” with the sales agents being independent contractors. Not surprisingly, the defendants refer to the same organizational structure to make the opposite point.

[18] In any event, even if I were to focus on the defendants’ organizational structure, I would still have to consider the relevant factors that are set out in the case law. Given that “the level of control the employer has over the worker’s activities will always be a factor”¹² I would be obliged to consider the extent to which Just Energy exercised control over the how, where and when of what was being sold.

[19] The plaintiffs filed six affidavits (all quite similar in format and content) that describe a high level of control. The affidavits say, in essence, that the morning sales meetings were mandatory, the sales agents were driven to and from pre-selected sales locations, were required to wear the defendants’ uniform, used a pre-approved sales script, and worked a mandatory number of hours, all under the defendants’ supervision. In other words, the defendants’ level of control over the how, when and where was extensive.

[20] The defendants filed three affidavits from equally knowledgeable witnesses swearing the exact opposite - that the outside sales agents were independent contractors that were “free to market anywhere they wanted.” The defendants’ affiants swore that the

¹¹ *Ibid.* at para. 26.

¹² *Sagaz, supra*, note 6, at para. 47.

morning sales meetings were completely optional, the sales locations or hours of work were not imposed on the sales agents, they weren't required to wear a Just Energy uniform or accept van rides from the crew co-ordinators and they didn't only sell Just Energy products. There were sales scripts but they were imposed primarily because of regulatory requirements. The sales agents were neither monitored nor supervised. According to the defendants' affiants, the sales agents were free to come and go as independent contractors and work wherever and whenever they pleased.

[21] Cross-examinations were conducted by counsel on both sides but the conflicting evidence about the level of control remained intact.

[22] Following the roadmap in *Hryniak v. Mauldin*,¹³ I readily concluded, without using the enhanced fact-finding powers set out in Rule 20.04 (2.1), that there were genuine issues (about the level of control) that required trial.

[23] I then asked the next question - whether the need for a trial could be avoided by using the enhanced fact-finding powers. I was concerned about using the enhanced powers for two reasons: (i) the significance of the credibility issues; and (ii) the insufficiency of the evidence before me. I realized that *viva voce* evidence would be needed. I then had to decide whether resort to a "mini-trial" under Rule 20.01 (2.2) was precluded by an over-arching statutory provision. I will explain each of these points in turn.

[24] **Credibility.** As already noted, the evidence about the level of control exercised by the defendants over its door to door sales agents is conflicting. One side swears that the sales agents could come and go and work whenever and wherever they pleased. The other side, the exact opposite.

[25] The Court of Appeal noted in *Gordashevskiy v. Aharon*,¹⁴ that "it is not open to a motion judge to simply prefer one affidavit over another in the absence of explanatory reasons for the preference that permit appellate review."¹⁵ Without hearing *viva voce* evidence, I would not be able to provide explanatory reasons why I prefer, say, the plaintiffs' affidavit evidence over that of the defendants. All the more so where, as here, the plaintiffs failed on cross-examination to challenge the defendants' affiants on their "no control" evidence. Given the evidentiary conflict in the sworn evidence before me, *viva voce* evidence would be essential, whether via a mini-trial or a trial.

¹³ *Hryniak v Mauldin*, [2014] 1 S.C.R. 87.

¹⁴ *Gordashevskiy v. Aharon*, 2019 ONCA 297.

¹⁵ *Ibid.* at para. 6.

[26] *Insufficient evidence.* During the class period, Just Energy had about a dozen offices in Ontario, each run by a regional distributor who was also said to be an independent contractor. The plaintiffs' affidavits spoke about their experiences in only three of these offices and only for a portion of the class period. They also limited their evidence to residential door to door sales agents and made no mention of the other two sales agent categories: customer renewal agents and commercial (business) agents.

[27] In order to fairly determine the key Common Issues (Nos. 1 and 4) – that is, whether the class members were “employees” and if so, whether they fell within the “route salesperson” exception - I would need more evidence about the customer renewal agents and the commercial agents. In particular, I would need evidence about the number of sales agents that did renewal and commercial work on a regular basis; the level of control that the defendants exercised in these circumstances; and the number of residential agents that from time to time opted to do this kind of work and how often this happened.

[28] I would also need evidence that would allow this court to draw reasonable inferences that could support a determination of the Common Issues on a class-wide basis for all 8000 class members. To clarify these questions¹⁶ at this stage of the proceeding, I would need to conduct either a mini-trial or a trial.

[29] *Can't be a mini-trial.* I say this for three reasons, the first two raising concerns and the third one being determinative. First, I would have to hear from numerous witnesses. Given the number of required witnesses, the mini-trial might arguably be no more efficient or cost-effective than a conventional “hybrid” trial.

[30] Second, I am mindful of the Court of Appeal's admonition in *Baywood Homes*,¹⁷ that “the motion judge's task of assessing credibility and reliability [is] especially difficult in a summary judgment and mini-trial context.”¹⁸ I recognize that the Supreme Court in *Hryniak* was less timid, noting that “concerns about credibility or clarification of the evidence” on the summary judgment motion can be addressed by calling oral evidence by way of a mini-trial.¹⁹ However, I also recognize that the Supreme Court added a proviso to this statement that in my view could well apply here:

¹⁶ *Hryniak, supra*, note 13, at para. 51: “Often, concerns about credibility or clarification of the evidence can be addressed by calling oral evidence on the motion itself.” (Emphasis added.)

¹⁷ *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450.

¹⁸ *Ibid.* at para. 44.

¹⁹ *Hryniak, supra*, note 13, at para. 51.

A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost-effective manner.²⁴

[36] Common Issues Nos. 10 and 11 are not easily detached from the other 11 issues. And even if they could be detached, there is no good reason to do so on the facts herein. It makes more sense if all 13 issues are heard together.

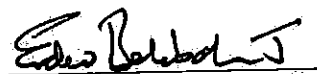
Disposition

[37] The plaintiffs' motion for summary judgment is dismissed. All 13 common issues shall proceed to trial.

[38] If both sides agree, I would be prepared to preside over the trial of the common issues. I would issue directions under Rule 20.05 to ensure that the trial proceeds in a timely, focused and expeditious fashion.

[39] Given that much of the material that was filed on this summary judgment motion can be used at the upcoming trial (whoever hears it) I am inclined to defer the question of costs until after the trial and the court's decision on the common issues. I say this because but for s. 34(1) of the CPA I would seriously have considered the super-sized mini-trial (using s. 12 of the CPA if necessary.) Had this happened, the costs question would not have materialized until the mini-trial was concluded and a decision had been rendered. In fairness, the same reasoning should apply here. In other words, the costs award on this motion should be deferred until the conclusion of the trial and a decision on the common issues. If either side disagrees, they should advise forthwith.

[40] I am obliged to counsel on both sides for their co-operation and assistance.



Justice Edward P. Belobaba

Date: June 21, 2019

²⁴ *Ibid.* at para. 34.

AppendixCertified Common Issues*Statutory Claim*

1. Are the Class Members “employees” of the Defendants pursuant to the *Employment Standards Act, 2000* (“ESA”)?
2. If the answer to (1) is “yes”, are the Class Members in “pensionable employment” of the Defendants pursuant to the *Canada Pension Plan* (“CPP”)?
3. If the answer to (1) is “yes”, are the Class Members in “insurable employment” of the Defendants pursuant to the *Employment Insurance Act* (“EI”)?
4. If the answer to (1) is “yes”, are the Class Members exempt from Parts VII, VIII, IX, X and XI of the *ESA*, or do the Class Members fall within the exception to this exemption as route salespersons?
5. If the answers to (1) and (4) are “yes”, do the minimum requirements of the *ESA* with regard to minimum wage, overtime pay, vacation pay, and public holiday and premium pay form express or implied terms of the contracts with the Class Members?

Breach of Contract

6. If the answers to questions (1) and (4) are “yes”, do the Defendants owe contractual duties and/or a duty of good faith to:
 - a. Ensure that the Class Members were compensated with the minimum wage?
 - b. Ensure that the Class Members’ hours of work were monitored and accurately recorded?
 - c. Properly classify and advise Class Members of their entitlement to overtime pay for hours worked in excess of 44 hours per week which the employer required or permitted?
 - d. Ensure that the Class Members were compensated with vacation pay?
 - e. Ensure that the Class Members were compensated with and public holiday and premium pay?
7. Did the Defendants breach any of their contractual duties and/or a duty of good faith? If so, how?
8. If the answers to (1) and (4) are “yes”, did the Defendants fail to pay the Class Members minimum wage, overtime pay, vacation pay, and/or public holiday and premium pay as required by the *ESA*?

9. If the answers to (2) and/or (3) are “yes”, did the Defendants fail to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Negligence

10. Alternatively, did the Defendant owe a duty of care to the Class Members to:
- a. ensure that Class Members are properly classified as employees;
 - b. advise Class Members of their entitlement to the minimum wage, overtime pay, vacation pay and public holiday and premium pay;
 - c. ensure that the Class Members hours of work are monitored and accurately recorded; and
 - d. ensure that Class Members are appropriately compensated with minimum wage, overtime pay, vacation pay and public holiday and premium pay.
11. Did the Defendants breach any of the duties of care found to exist above? If so, how?

Unjust Enrichment

12. Were the Defendants unjustly enriched by failing to compensate Class Members with minimum wages, overtime pay, vacation pay and public holiday and premium pay owed to them, in accordance with the *ESA*, and/or failing to make the prescribed employer CPP and/or EI contributions on behalf of the Class Members?

Limitation Period

13. Are the claims that relate to services provided before May 4, 2013 (or services for which commission payments were made before May 4, 2013) barred by the two-year limitation period set out in the *Limitations Act, 2002*?

*THIS IS EXHIBIT "I" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

HAIDAR OMARALI
PLAINTIFF

JUST ENERGY GROUP INC., ET AL
DEFENDANTS

Court File No.: CV-15-52749300CP



ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

TRIAL RECORD

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Lawyers for the Plaintiff

Nov 20/19.

A 20 day trial is scheduled for Nov 15/21. The pre-trial conference is scheduled for Sept 30/21, at 10:00 am. There are no experts for the trial. The parties consent to the attached timetable.

GARTH MYERS, J.

#19

TIMETABLE FOR REMAINING LITIGATION STEPS

Title of Proceeding:

OMARALI V JUST ENERGY GROUP et. al.

File Number:

15-00527493-00CP

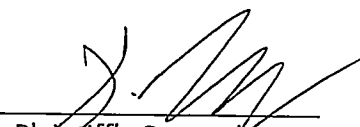
Examination for Discovery of the Plaintiff, if any, by: March 13, 2020

Answers to Undertakings of the Plaintiff, arising from the above examination by: May 15, 2020

Exchange of Expert Reports: N/A

Motions arising from the above examination, if any, to be initiated by: June 19, 2020

Evidentiary and pre-trial motions: TBD



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*THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is written in a cursive style and appears to read "D. Russell".

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 19TH
)	
JUSTICE KOEHNEN)	DAY OF MARCH, 2021



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**”)

**AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated March 9, 2021)**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

ON READING the affidavit of Michael Carter sworn March 9, 2021 and the Exhibits thereto (the “**First Carter Affidavit**”), the affidavit of Michael Carter sworn March 16, 2021 and the Exhibits thereto (the “**Second Carter Affidavit**”), the affidavit of Michael Carter sworn March 18, 2021 and the Exhibits thereto (the “**Third Carter Affidavit**”), the affidavit of Margaret Munnelly sworn March 16, 2021 and the Exhibits thereto (the “**Munnelly Affidavit**”), the pre-filing report of the proposed monitor, FTI Consulting Canada Inc. (“**FTI**”), dated March 9, 2021, the First Report of FTI in its capacity as the Court-appointed monitor of the Applicants (the “**Monitor**”), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule “A” hereto (the “**JE Partnerships**”, and collectively with the Applicants, the “**Just Energy Entities**”), the Monitor, Alter Domus (US) LLC (the “**DIP Agent**”), as administrative agent for the lenders (the “**DIP Lenders**”) under the DIP Term Sheet (as defined below), the DIP Lenders and such other counsel who were present, and on reading the consent of FTI to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in Schedule “B” hereto or the First Carter Affidavit, as applicable, if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the JE Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”)

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Just Energy Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Just Energy Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Just Energy Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, staffing agencies, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that:

- (a) the Just Energy Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the First Carter Affidavit or, with the consent of the Monitor, the DIP Agent and the DIP Lenders, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (a “**Cash Management Bank**”) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Just Energy Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Just Energy Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

- Management System, an unaffected creditor under any Plan with regard to Cash Management Obligations. All present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever to a Cash Management Bank under, in connection with, relating to or with respect to any and all agreements and arrangements evidencing or in respect of treasury facilities and cash management products (including, without limitation, all pre-authorized debit banking services, electronic funds transfer services, overdraft balances, corporate credit cards, merchant services and pre-authorized debits) provided by a Cash Management Bank to any Just Energy Entity, and any unpaid balance thereof, are collectively referred to herein as the “**Cash Management Obligations**”;
- (b) during the Stay Period (as defined below), no Cash Management Bank shall, without leave of this Court: (i) exercise any sweep remedy under any applicable documentation (provided, for greater certainty, that the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts held by the U.S. Bank Account Holders may continue in the ordinary course); (ii) exercise or claim any right of set-off against any account included in the Cash Management System, other than set-off permitted pursuant to paragraph 8 against applicable Authorized Cash Collateral solely in respect of any Cash Management Obligations; or (iii) subject to paragraph 6(d)(ii), modify the Cash Management System;
 - (c) any of the Cash Management Banks may rely on the representations of the applicable Just Energy Entities with respect to whether any cheques or other payment order drawn or issued by the applicable Just Energy Entity prior to, on, or subsequent to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for: (i) relying on such representations by the applicable Just Energy Entities as provided for herein; or (ii) honouring any cheque (whether made before, on or after the date hereof) in a good faith belief that the Court has authorized such cheque or item to be honoured;
 - (d) (i) those certain existing deposit agreements between the Just Energy Entities and the Cash Management Banks shall continue to govern the post-filing cash management relationship between the Just Energy Entities and the Cash Management Banks, and

- that all of the provisions of such agreements shall remain in full force and effect; (ii)(A) changes to the Cash Management System in accordance with the Lender Support Agreement shall be permitted; and (B) the Just Energy Entities, with the consent of the Monitor, the DIP Agent, the majority of the DIP Lenders and the Cash Management Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, where such changes are not otherwise implemented pursuant to paragraph 6(d)(ii)(A); (iii) all control agreements in existence prior to the date of this Order shall apply; and (iv) the Cash Management Banks are authorized to debit the Just Energy Entities' accounts in the ordinary course of business in accordance with the Cash Management System arrangements without the need for further order of this Court for all undisputed Cash Management Obligations owing to the Cash Management Banks;
- (e) the Cash Management Banks shall be entitled to the benefit of and are hereby granted a charge (the “**Cash Management Charge**”) on the Property to secure the Cash Management Obligations due and owing and that have not been paid in accordance with the applicable Cash Management Arrangements (as defined in the Lender Support Agreement). The Cash Management Charge shall have the priority set out in paragraphs 53-55 herein; and
- (f) the Just Energy Entities are authorized but not directed to continue to operate under the merchant processing agreements with JPMorgan Chase Bank, N.A., Paymentech, LLC (“**Paymentech**”) (collectively and as amended, restated, supplemented, or otherwise modified from time to time, the “**Merchant Processing Agreement**”). The Just Energy Entities are authorized to pay or reimburse Paymentech for fees, charges, refunds, chargebacks, reserves and other amounts due and owing from the Just Energy Entities to Paymentech (the “**Merchant Services Obligations**”) whether such obligations are incurred prior to, on or after the date hereof, and Paymentech is authorized to receive or obtain payment for such Merchant Services Obligations, as provided under, and in the manner set forth in, the Merchant Processing Agreement, including, without limitation, by way of recoupment or set-off without further order of the Court.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Just Energy Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Just Energy Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided, however, that the Just Energy Entities, until further order of this Court, are hereby permitted, subject to the terms of the Definitive Documents: (i) with the consent of the Monitor, to provide cash collateral (“**Authorized Cash Collateral**”) to third parties (the “**Collateral Recipients**”), including to the Cash Management Banks in accordance with the Lender Support Agreement, with respect to obligations incurred before, on or after the date hereof, and to grant security interests in such Authorized Cash Collateral in favour of the Collateral Recipients, where so doing is necessary to operate the Business in the normal course during these proceedings; (ii) subject to the terms of the Lender Support Agreement, to reimburse the reasonable documented fees and disbursements of one Canadian legal counsel, one U.S. legal counsel, one local counsel in Texas and one financial advisor to the agent (the “**CA Agent**”) and the lenders (the “**CA Lenders**”) under the Credit Agreement, whether incurred before or after the date of this Order; (iii) subject to the terms of the Lender Support Agreement, to pay all non-default interest and fees to the CA Agent and the CA Lenders in accordance with its terms; and (iv) to repay advances under the Credit Agreement solely for the purpose of creating availability under the Revolving Facilities in order for the Just Energy Entities to request the issuance of Letters of Credit under the Revolving Facilities to continue to operate the Business in the ordinary course during these proceedings, subject to: (A) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit under the Revolving Facilities; and (B) receipt of written confirmation from the applicable CA Lender(s) under the Credit Agreement that such CA Lender(s) will issue a Letter of Credit of equal value within one (1) Business Day thereafter. Capitalized terms used but not otherwise defined in this paragraph shall have the meanings ascribed thereto in the Credit Agreement.

8. **THIS COURT ORDERS** that the holders of cash collateral provided by the Just Energy Entities prior to the date hereof or any Collateral Recipients of Authorized Cash Collateral (the foregoing, collectively, “**Cash Collateral**”) shall be authorized to exercise any available rights of

set-off in respect of such Cash Collateral with respect to obligations secured thereby, whether incurred before, on or after the date hereof.

9. **THIS COURT ORDERS** that the Charges (as defined below) shall rank junior in priority to any liens, security interests and charges attached to Cash Collateral in favour of the holders thereof, and shall attach to the Cash Collateral only to the extent of any rights of any Just Energy Entity to the return of such Cash Collateral.

10. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as hereinafter defined), the Just Energy Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages (including, without limitation, the Q3 bonus described in the Munnely Affidavit), salaries, commissions, employee benefits, contributions in respect of retirement or other benefit arrangements, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) all outstanding and future amounts owing to or in respect of other workers providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing arrangements;
- (c) the fees and disbursements of any Assistants retained or employed by the Just Energy Entities in respect of these proceedings at their standard rates and charges, which, in the case of the Financial Advisor (as defined below) shall be the amounts payable in accordance with the Financial Advisor Agreement (as defined below);
- (d) with the consent of the Monitor in consultation with the agent under the Credit Agreement (or its advisors), amounts owing for goods or services actually provided to any of the Just Energy Entities prior to the date of this Order by third parties, if, in the opinion of the Just Energy Entities, such third party is critical to the Business and ongoing operations of the Just Energy Entities;
- (e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 12 of this Order, and whereby the nonpayment of

- which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment; and
- (f) taxes related to revenue, State income or operations incurred or collected by a Just Energy Entity in the ordinary course of business.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Just Energy Entities shall be entitled but not required to pay all reasonable expenses incurred by the Just Energy Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Just Energy Entities following the date of this Order.

12. **THIS COURT ORDERS** that the Just Energy Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Just Energy Entities in connection with the sale of goods and services by the Just Energy Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Just Energy Entities.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Just Energy Entities shall, subject to such requirements as are imposed by the CCAA and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Just Energy Entities to proceed with an orderly restructuring of the Just Energy Entities and/or the Business (the “**Restructuring**”).

LEASES

14. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Just Energy Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Just Energy Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. **THIS COURT ORDERS** that the Just Energy Entities shall provide each of the relevant landlords with notice of the relevant Just Energy Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Just Energy Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Just Energy Entity, or by further Order of this Court upon application by the Just Energy Entities on at least two (2) days notice to such landlord and any such secured creditors. If any Just Energy Entity disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (i) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Just Energy Entity and the Monitor 24 hours' prior written notice, and (ii) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Just Energy Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE JUST ENERGY ENTITIES, THE BUSINESS OR THE PROPERTY

17. **THIS COURT ORDERS** that until and including June 4, 2021 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process before any court, tribunal, agency or other legal or, subject to paragraph 18, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Just Energy Entities or the

Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Just Energy Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Just Energy Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, foreign regulatory body or agency or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Just Energy Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Just Energy Entities to carry on any business which the Just Energy Entities are not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales against or in respect of the Just Energy Entities or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court on notice to the Service List.

NO INTERFERENCE WITH RIGHTS

20. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Just Energy Entities except with

the written consent of the Just Energy Entities and the Monitor, leave of this Court or as permitted under any Qualified Support Agreement or the Lender Support Agreement.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that during the Stay Period, except as permitted under any Qualified Support Agreement or the Lender Support Agreement, all Persons having oral or written agreements with any Just Energy Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Just Energy Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Just Energy Entities, and that the Just Energy Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Just Energy Entities in accordance with normal payment practices of the Just Energy Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Just Energy Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. **THIS COURT ORDERS** that, subject to paragraph 30 but notwithstanding any other paragraphs of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Just Energy Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

23. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Second Carter Affidavit and attached as Confidential Appendix “Q” thereto, is

hereby approved and the Just Energy Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed the aggregate amount of C\$2,012,100 for Canadian dollar payments and US\$ 3,876,024 for U.S. dollar payments, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 53-55 herein.

LENDER SUPPORT AGREEMENT

25. **THIS COURT ORDERS** that the Lender Support Agreement is hereby ratified and approved and that, upon the occurrence of a termination event under the Lender Support Agreement, the CA Lenders may exercise the rights and remedies available to them under the Lender Support Agreement in accordance with the terms thereof.

PRE-FILING SECURITY INTERESTS

26. **THIS COURT ORDERS** that any obligations secured by a valid, enforceable and perfected security interest upon or in respect of any of the Property pursuant to a security agreement which includes as collateral thereunder any Property acquired after the date of the applicable security agreement (“**After-Acquired Property**”), shall continue to be secured by the Property (including After Acquired Property that may be acquired by the applicable Just Energy Entities after the commencement of these proceedings) notwithstanding the commencement of these proceedings, subject to the priority set out in paragraphs 53-55 herein.

COMMODITY SUPPLIERS

27. **THIS COURT ORDERS** that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the “**Priority Commodity/ISO Charge**”) on the Property in an amount equal to the value of the Priority Commodity/ISO Obligations. The value of the Priority Commodity/ISO Obligations shall be determined in accordance with the terms of the existing agreements or arrangements between the applicable Just Energy Entity and the Qualified Commodity/ISO Supplier or, in the event of any dispute, by the

Court. The Priority Commodity/ISO Charge shall have the priority set out in paragraphs 53-55 herein.

28. **THIS COURT ORDERS** that the Commodity/ISO Supplier Support Agreements are hereby ratified, approved and deemed to be Qualified Support Agreements.

29. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver Qualified Support Agreements with any counterparty to a Commodity Agreement.

30. **THIS COURT ORDERS** that upon the occurrence of an event of default under a Qualified Support Agreement, the applicable Qualified Commodity/ISO Supplier may exercise the rights and remedies available to it under its Qualified Support Agreement, or upon five (5) days' notice to the Just Energy Entities, the Monitor and the Service List, may apply to this Court to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to its Commodity Agreement or ISO Agreement and the Priority Commodity/ISO Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities.

31. **THIS COURT ORDERS** that the Monitor shall provide a report on the value of the Priority Commodity/ISO Obligations as of the last day of each calendar month by posting such report on the Monitor's Website (as defined below) within three (3) Business Days of such calendar month end.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

32. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Just Energy Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Just Energy Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Just Energy Entities, if one is

filed, is sanctioned by this Court or is refused by the creditors of the Just Energy Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

33. **THIS COURT ORDERS** that each of the Just Energy Entities shall jointly and severally indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Just Energy Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

34. **THIS COURT ORDERS** that the directors and officers of the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of C\$44,100,000, as security for the indemnity provided in paragraph 33 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53-55 herein.

35. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the Just Energy Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 33.

APPOINTMENT OF MONITOR

36. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Just Energy Entities with the powers and obligations set out in the CCAA or set forth herein and that the Just Energy Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Just Energy Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Just Energy Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Just Energy Entities, to the extent required by the Just Energy Entities, in their dissemination to the DIP Agent, the DIP Lenders and their counsel of financial and other information in accordance with the Definitive Documents;
- (d) advise the Just Energy Entities in their preparation of the Just Energy Entities' cash flow statements and reporting required by the DIP Agent and DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Agent and DIP Lenders and their counsel in accordance with the Definitive Documents;
- (e) advise the Just Energy Entities in their development of a Plan and any amendments to a Plan;
- (f) assist the Just Energy Entities, to the extent required by the Just Energy Entities, with the holding and administering of creditors' or shareholders' meeting for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Just Energy Entities, wherever located and to the extent that is necessary to adequately assess the Just Energy Entities' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

- (i) perform such other duties as are required by this Order or by this Court from time to time.

38. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Just Energy Entities and the DIP Agent and the DIP Lenders with information provided by the Just Energy Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Just Energy Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

41. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or

obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including both U.S. and Canadian counsel for all purposes of this Order), and counsel to the Just Energy Entities (including both U.S. and Canadian counsel for all purposes of this Order) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Just Energy Entities as part of the costs of these proceedings. The Just Energy Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the Just Energy Entities' counsel on a weekly basis.

43. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

44. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of C\$3,000,000 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53-55 herein.

DIP FINANCING

45. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, pursuant a credit facility from the DIP Agent and the DIP Lenders in order to finance the Just Energy Entities' working capital requirements and other general corporate purposes, all in accordance with the Cash Flow Statements (as defined in the DIP Term Sheet) and Definitive Documents, provided that borrowings under such credit facility shall not exceed US\$125,000,000 unless permitted by further Order of this Court.

46. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities, the DIP Agent and the DIP Lenders dated as of March 9, 2021 and attached as Appendix “DD” to the First Carter Affidavit (as may be amended or amended and restated from time to time, the “**DIP Term Sheet**”).

47. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet and the Cash Flow Statements, the “**Definitive Documents**”), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Just Energy Entities are hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order. Notwithstanding any other provision in this Order, all payments and other expenditures to be made by any of the Just Energy Entities to any Person (except the Monitor and its counsel) shall be in accordance with the terms of the Definitive Documents, including in respect of payments in satisfaction of Priority Commodity/ISO Obligations.

48. **THIS COURT ORDERS** that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Lenders’ Charge**”) on the Property, which DIP Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders’ Charge shall have the priority set out in paragraphs 53-55 hereof.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Agent on behalf of the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders’ Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lenders’ Charge, the DIP Agent or the DIP Lenders, as applicable, may immediately cease making advances or providing any credit to the Just Energy Entities

- and shall be permitted to set off and/or consolidate any amounts owing by the DIP Agent or the DIP Lenders to the Just Energy Entities against the obligations of the Just Energy Entities to the DIP Agent and the DIP Lenders under the Definitive Documents or the DIP Lenders' Charge, make demand, accelerate payment and give other notices with respect to the obligations of the Just Energy Entities to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Lenders' Charge, or to apply to this Court on five (5) days' notice to the Just Energy Entities, the Monitor and the Service List to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities; and
- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Just Energy Entities or the Property.

50. **THIS COURT ORDERS AND DECLARES** that the DIP Agent, the DIP Lenders, the Qualified Commodity/ISO Suppliers and the Cash Management Banks shall be treated as unaffected in any Plan filed by the Applicants or any of them under the CCAA, or any proposal filed by the Applicants or any of them under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents, the Priority Commodity/ISO Obligations or the Cash Management Obligations, as applicable.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

51. **THIS COURT ORDERS** that the agreement dated February 20, 2021 engaging BMO Nesbitt Burns Inc. (the "**Financial Advisor**") as financial advisor to the Just Energy Entities and attached as Confidential Appendix "FF" to the First Carter Affidavit (the "**Financial Advisor Agreement**"), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and the Just Energy Entities are authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

52. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$8,600,000 as security for the fees and disbursements and other amounts payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 53-55 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

53. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C\$3,000,000 and C\$8,600,000, respectively), on a *pari passu* basis;

Second – Directors’ Charge (to the maximum amount of C\$44,100,000);

Third – KERP Charge (to the maximum amounts of C\$2,012,100 and US\$3,876,024);

Fourth – DIP Lenders’ Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis; and

Fifth – Cash Management Charge.

54. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge or the Cash Management Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. **THIS COURT ORDERS** that, subject to paragraph 9, each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests,

trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person (including those commodity suppliers listed in Schedule “A” hereto).

56. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, or further Order of this Court.

57. **THIS COURT ORDERS** that the Charges, the agreements and other documents governing or otherwise relating to the obligations secured by the Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Agent or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Just Energy Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any Just Energy Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Just Energy Entities entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and

- (c) the payments made by the Just Energy Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Just Energy Entities' interest in such real property leases.

SERVICE AND NOTICE

59. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Just Energy Entities, a notice to every known creditor who has a claim against the Just Energy Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

60. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

61. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice->

commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL - <http://cfcanada.fticonsulting.com/justenergy> (the “**Monitor’s Website**”).

62. **THIS COURT ORDERS** that the Just Energy Entities, the DIP Agent or the DIP Lenders and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal deliver, facsimile or other electronic transmission to the Just Energy Entities’ creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

FOREIGN PROCEEDINGS

63. **THIS COURT ORDERS** that the Applicant, Just Energy Group Inc. (“**JEGI**”) is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

64. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

65. **THIS COURT ORDERS** that any interested party may apply to this Court to amend or vary this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 53-55 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents or pursuant to the Qualified Support Agreement, as applicable, until the date this Order may be amended, varied or stayed. For the avoidance of doubt (i) no payment in respect of any obligations secured by the Priority Commodity/ISO Charge or the Cash Management Charge or made to the CA Lenders pursuant to the Lender Support Agreement, and (ii) none of the Authorized Cash Collateral, shall be subject to the terms of any intercreditor agreement, including any "turnover" or "waterfall" provision(s) therein.

66. **THIS COURT ORDERS** that, notwithstanding paragraph 65 of this Order, the Just Energy Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

67. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Just Energy Entities, the Business or the Property.

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

69. **THIS COURT ORDERS** that each of the Just Energy Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that JEGI is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

70. **THIS COURT ORDERS** that Confidential Appendices “FF” and “GG” to the First Carter Affidavit and Confidential Appendix “Q” to the Second Carter Affidavit shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

71. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

_____ 

SCHEDULE “A”**JE Partnerships****Partnerships:**

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

Commodity Suppliers:

- EXELON GENERATION COMPANY, LLC
- BRUCE POWER L.P.
- SOCIÉTÉ GÉNÉRALE
- EDF TRADING NORTH AMERICA, LLC
- NEXTERA ENERGY POWER MARKETING, LLC
- MACQUARIE BANK LIMITED
- MACQUARIE ENERGY CANADA LTD.
- MACQUARIE ENERGY LLC
- MORGAN STANLEY CAPITAL GROUP

- BP CANADA ENERGY MARKETING CORP.
- BP ENERGY COMPANY
- BP CORPORATION NORTH AMERICA INC.
- BP CANADA ENERGY GROUP ULC
- SHELL ENERGY NORTH AMERICA (CANADA) INC.
- SHELL ENERGY NORTH AMERICA (US), L.P.

SCHEDULE “B”**DEFINITIONS**

“**Commodity Agreement**” means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products.

“**ISO Agreement**” means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

“**Lender Support Agreement**” means that certain Accommodation and Support Agreement dated as of March 18, 2021 and attached as Exhibit “A” to the Third Carter Affidavit, among the CA Agent, the CA Lenders and the Just Energy Entities, which agreement shall not be amended, restated or modified in any manner without the consent of the majority of the DIP Lenders and the Monitor.

“**Priority Commodity/ISO Obligation**” means amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under an ISO Agreement on or before the date of this Order, whether or not yet due).

“**Qualified Commodity/ISO Supplier**” means any counterparty to a Commodity Agreement or ISO Agreement as of March 9, 2021 that has executed or executes a Qualified Support Agreement with a Just Energy Entity and refrained from exercising termination rights under the Commodity Agreement as a result of the commencement of the Proceedings absent an event of default under such Qualified Support Agreement.

“Qualified Support Agreement” means a support agreement between a Just Energy Entity and a counterparty to a Commodity Agreement, in form and substance satisfactory to the Just Energy Entities and the DIP Lenders, acting reasonably, which includes, among other things: (i) that such counterparty shall apply to the Court on five (5) days’ notice to the Just Energy Entities, the Monitor and the Service List prior to exercising any termination rights under a Qualified Support Agreement; (ii) the obligation to supply physical and financial power and natural gas and other related services pursuant to any confirmations or transactions executed pursuant to a Commodity Agreement; and (iii) an agreement to refrain from exercising termination rights as a result of the commencement of the Proceedings absent an event of default under such support agreement.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al
(collectively, the "**Applicants**")

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

AMENDED & RESTATED INITIAL ORDER

OSLER, HOSKIN & HARCOURT, LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Michael De Lellis (LSO# 48038U)
Jeremy Dacks (LSO# 41851R)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicants

*THIS IS EXHIBIT "K" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Lori Seto

From: James Harnum <jharnum@kmlaw.ca>
Sent: September 10, 2021 1:40 PM
To: Wasserman, Marc; 'rthornton@tgf.ca'
Cc: Aryan Ziaie; David Rosenfeld
Subject: Just Energy - claims process order

Marc and Bob,

I hope you are both well.

As you know, Koskie Minsky is class counsel in *Omarali v. Just Energy*. The class action has been certified and was set for trial this year. Through the Representative Plaintiff, our firm represents approximately 7,900 potential employee creditors. We have reviewed the claims process order and have a few minor concerns that we hope can be addressed prior to the hearing of the motion on the 15th.

First, we see that the definition of "Claim" captures "any claim brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action". Can both the Company and the Monitor please confirm that the Representative Plaintiff, through Koskie Minsky, can file one claim on behalf of all the Class Members and that the Class Members can rely on that claim without any need to file any individual claims. It appears that this is the intention of the language in the order, but as it is not as explicit as it might be, we would ask for you to both confirm on behalf of your clients that Koskie Minsky can file one claim on behalf of the class.

Second, we have some concerns about the process for the appointment of a claims officer. We are of course hopeful that the class members' claims can be resolved without the need for a claims officer, but if one is required, we are not convinced that Mr. Sellers is necessarily the right choice for the adjudication of this claim. We note that para. 42 of the Order empowers the Monitor or the Company to bring a motion to appoint a different officer, and we would request that this language be changed to allow for a different claims officer to be appointed upon agreement of the creditor, the Company and Monitor, and failing agreement, to allow any party to bring a motion to appoint a different officer. That being said, we are cognizant of concerns that the Company and Monitor may have about an unwieldy process where multiple creditors may seek to pick and choose who their claims officer would be, and as a result, we are open to other suggestions for how our concerns might be addressed.

We are happy to discuss.

Regards,

James Harnum

**KOSKIE
MINSKY** **James Harnum**
Partner
T: +1 416-542-6285 | F: +1 416-204-2819 | E: jharnum@kmlaw.ca
JUSTICE MATTERS

*THIS IS EXHIBIT "L" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Roswell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.



September 21, 2021

David Rosenfeld
Direct Dial: 416-595-2700
Direct Fax: 416-204-2894
drosenfeld@kmlaw.ca

BY EMAIL - MWasserman@osler.com; RThornton@tqf.ca

Mr. Marc Wasserman
OSLER, HOSKIN & HARCOURT LLP
100 King Street West, Suite 6200
Toronto ON M5X 1B8

Mr. Robert Thornton
THORNTON GROUT FINNIGAN LLP
100 Wellington Street West, Suite 3200
Toronto ON M5K 1K7

Dear Counsel:

**Re: *Omarali v. Just Energy Group Inc. et al.*
Court File No. CV-15-52749300 CP
Class Members' Claims in the Just Energy CCAA Proceeding**

As you are aware, we are class counsel in the above-noted action against Just Energy Group Inc., Just Energy Corp. and Just Energy Ontario L.P. (collectively "**Just Energy**") bearing Court File No. CV-15-52749300 CP (the "**Class Action**").

The Class Action has been certified and involves a class of approximately 7,900 individuals. As asserted in the Class Action, these individuals were employees of Just Energy and are owed wages. As a result, they are creditors in the application commenced by Just Energy and related companies under the *Companies' Creditors Arrangement Act* bearing Court File No. CV-21-00658423-00CL (the "**CCAA Proceeding**").

Background and Status of the Class Action

The core allegation in the Class Action is that Just Energy misclassified class member employees as independent contractors, thereby denying them minimum protections under the *Employment Standards Act* ("**ESA**"). As a result of Just Energy's employment misclassification and related breach of contract, class members claim \$100 million in damages, including for Just Energy's failure to pay minimum wage, overtime pay and vacation pay to them. A copy of the Amended Statement of Claim filed in the Class Action is enclosed with this letter.

As you also know, a four-week trial of the certified common issues in this action was scheduled to commence in November 2021. Although the trial cannot proceed because of the stay of proceedings obtained in the CCAA Proceeding, there is significant evidence that confirms class members' employment status and their entitlement to the damages claimed in the aggregate. Such evidence will substantiate the class' entitlement to damages in the claims process.



Our position concerning the employment status of class members is consistent with judicial determinations made by the lower and appellate courts in Ohio. We are confident that an Ontario trier-of-fact would reach similar conclusions in the Class Action.

Based on our understanding of the CCAA Proceeding, there is a possibility that the claims of the class members will not be fully satisfied.

Claims Against Directors

As employees of Just Energy, class members have valid claims for unpaid wages and vacation pay against Just Energy's directors under the *ESA*, the *Business Corporations Act* (Ontario) and/or the *Canada Business Corporations Act*. These claims will be asserted in the claims process in the CCAA Proceeding.

We understand that there exist certain insurance policies covering claims against Just Energy's directors. We recognize there are various other creditors who may attempt to make claims on those insurance policies. We also understand those policies, or some of them, were identified and disclosed as part of the *Canada Business Corporations Act* reorganization that occurred in September 2020. Pursuant to subrule 31.06(4) of the *Rules of Civil Procedure*, and given that the claims in the Class Action engage Just Energy's directors' liability, which liability is sought to be addressed in the CCAA Proceeding, class members are entitled to disclosure of the insurance policies. Kindly provide copies of them to us as soon as possible.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "D. Rosenfeld", with a small mark at the end of the signature.

David Rosenfeld
DR/ls
Enclosure

C Marc Wasserman, Jeremy Dacks – Fasken Martineau (by email)
James Harnum, Aryan Ziaie – Koskie Minsky LLP (by email)

*THIS IS EXHIBIT "M" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature appears to be "D. Russell" written in a cursive, flowing style.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY**

JUSTICE MATTERS

October 29, 2021

Aryan Ziaie
Direct Dial:416-595-2104
aziaie@kmlaw.ca**BY EMAIL – claims.justenergy@fticonsulting.com**FTI Consulting Canada Inc.
Just Energy Monitor
P.O. Box 104, TD South Tower
79 Wellington Street West
Toronto Dominion Centre, Suite 2010
Toronto, ON M5K 1G8

Attention: Just Energy Claims Process

Dear Monitor:

**Re: *Omarali v. Just Energy Group Inc. et al.*
Court File No. CV-15-52749300 CP
Class Members' Claims in the Just Energy CCAA Proceeding**

Our client, Haidar Omarali, is filing a Proof of Claim Form and D&O Proof of Claim Form on behalf of class members in the class proceeding bearing Court File No. CV-15-52749300 CP (*Omarali v. Just Energy*). Both Proof of Claim Forms are enclosed.

You will shortly receive, by TitanFile, the following documentation filed in support of both Proof of Claim Forms (pursuant to section 4 of each form):

1. Amended Statement of Claim;
2. Plaintiff's Motion Record filed in support of a summary judgment motion returnable June 11-13, 2019 (the "**SJM**"), Volumes 1-7;
3. Transcript Brief filed in connection with the SJM; and
4. Moving Factum filed in connection with the SJM.

Please also note that we have provided: (i) at Schedule "A" to the Just Energy Proof of Claim Form, a calculation explaining the amount claimed; and (ii) at Schedule "C" to the D&O Proof of Claim Form, an explanation of the basis for the claim against the directors.

Yours truly,

KOSKIE MINSKY LLPAryan Ziaie
AZ/sr

C James Harnum, David Rosenfeld – Koskie Minsky LLP (by email)

*THIS IS EXHIBIT "N" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Rosazell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

**PRE-FILING REPORT OF FTI CONSULTING CANADA INC., AS
THE PROPOSED MONITOR**

March 9, 2021

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

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

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

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

PRE-FILING REPORT OF THE PROPOSED MONITOR

INTRODUCTION

1. FTI Consulting Canada Inc. ("**FTI**" or the "**Proposed Monitor**") understands that Just Energy Group Inc. ("**Just Energy**") and the other applicant companies listed in the style of cause above (collectively, the "**Applicants**") intend to make an application before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") for an initial order (the "**Initial Order**") under the Companies' Creditors Arrangement Act (the "**CCAA**") to, among other things, obtain a stay of proceedings to allow the Applicants an opportunity to restructure their business and affairs.

2. The Applicants propose that the Court appoint FTI as Monitor in these CCAA proceedings (the “**CCAA Proceedings**”).
3. This Pre-Filing Report of the Proposed Monitor (the “**Pre-Filing Report**”) has been prepared by the Proposed Monitor prior to and in contemplation of its appointment as Monitor to provide information to the Court solely in respect of the relief sought by the Applicants at the hearing in respect of the Initial Order. Should FTI be appointed as Monitor at the initial hearing, FTI intends to file a further report with the Court as Monitor in respect of the relief being sought by the Applicants at the comeback hearing.
4. Any capitalized terms that are not defined herein have the meanings given to them in the glossary attached as **Schedule “A”** to this Pre-Filing Report (the “**Glossary**”). To assist the Court and other readers, the Glossary includes certain common industry-specific terms that are not used herein but arise in pertinent documents relating to the Applicants’ business.

PURPOSE

5. The purpose of this Pre-Filing Report is to inform the Court of:
 - (a) background information with respect to the Applicants;
 - (b) FTI’s qualifications to act as Monitor, if appointed;
 - (c) an overview of the Cash Flow Forecast (as defined herein) and the Proposed Monitor’s comments regarding the reasonableness thereof;
 - (d) the relief sought by the Applicants in the proposed Initial Order and the Proposed Monitor’s recommendation in respect of same, including, among other things:
 - (i) granting a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Applicants up to and including March 19, 2021;
 - (ii) extending the Stay of Proceedings to certain foreign and domestic regulators on an interim basis;

- (iii) extending the protections and stays afforded in the Initial Order to certain limited partnerships that are affiliates of the Applicants;
 - (iv) approving the proposed debtor-in-possession interim financing arrangement;
 - (v) approving the Applicants' engagement of BMO Nesbitt Burns Inc. ("**BMO**") as its financial advisor (in such capacity, the "**Financial Advisor**");
 - (vi) authorizing the Applicants to make certain pre-filing payments;
 - (vii) granting certain protections in favour of the Applicants' critical suppliers; and
 - (viii) granting certain Court-ordered charges sought by the Applicants.
6. This Pre-Filing Report should be read in conjunction with the Affidavit of Michael Carter, to be sworn March 9, 2021 (the "**Carter Affidavit**"), which describes in more detail the Applicants' operations and the circumstances leading to their current situation.
7. All references to monetary amounts in this Pre-Filing Report are in Canadian dollars unless otherwise noted.

BACKGROUND INFORMATION

Overview

8. Just Energy is incorporated under the *Canada Business Corporations Act*. It maintains dual headquarters in Ontario and Texas, and its shares are listed on the Toronto Stock Exchange and the New York Stock Exchange.
9. Just Energy is primarily a holding company, with operating subsidiaries situated across Canada and the United States (Just Energy and its subsidiaries collectively, the "**Just Energy Group**"). A copy of the Just Energy Group's corporate organizational chart will be attached as Exhibit "F" to the Carter Affidavit.

10. As detailed herein, the Just Energy Group faces a material and immediate risk to its ability to continue as a going concern, which is a direct consequence of the unprecedented and catastrophic effects of an extreme weather event that crippled the Texas energy system in February of this year. The Proposed Monitor understands that the Just Energy Group is urgently seeking the Court-ordered relief described herein in order to avoid the near-certain demise of its operations. Specifically, as described herein, as a result of the winter storm and the subsequent regulatory response, the Just Energy Group estimates it may have incurred losses and additional costs totaling over \$312 million. As a result, the Just Energy Group is currently estimating that it will be in a negative liquidity position on March 9, 2021 as certain payments owing by the Just Energy Group become due and owing on such date, including approximately US\$96.24 million to Electric Reliability Council of Texas (“ERCOT”).

Business Operations and the Regulatory Environment

11. Established in 1997, the Just Energy Group is a leading retail energy provider. Its principal line of business consists of purchasing retail energy and natural gas commodities from certain large energy suppliers and re-selling them to residential and commercial customers.
12. The Just Energy Group services more than 950,000 residential and commercial customers across various jurisdictions in Canada and the United States. Residential customers represent approximately 35% of its residential customer equivalent (“RCE”)¹ base, with the Just Energy Group’s commercial customers making up the balance. The Proposed Monitor understands that Texas is the single largest market for the Just Energy Group, representing 47% of its revenues in fiscal year 2020. Other significant markets include Ontario, Alberta, Illinois and Pennsylvania. The Just Energy Group has expended significant effort over many years to build a large and geographically-diversified customer base.

¹ A unit of measurement equivalent to the approximate amount of gas and electricity used by a typical household in Ontario.

13. According to the Just Energy Group's consolidated financial statements, for the nine-months ending December 2020, despite a challenging operating environment because of the COVID-19 pandemic, revenues were approximately \$1.7 billion. During the same period, the Just Energy Group had positive cash flow of approximately \$27 million. Its reported Embedded Gross Margin² for residential and commercial customers for the same period was approximately \$1 billion and \$360 million, respectively.
14. The Just Energy Group collectively employs approximately 979 full-time, non-unionized employees. A geographic breakdown of the employees is set out in the Carter Affidavit. Most employees are located in one of three jurisdictions: Ontario, Texas and India.
15. The Just Energy Group operates in highly regulated markets. The Just Energy Group is subject to numerous different regulatory regimes in Canada and the U.S. overseen by various provincial and state regulators. The Carter Affidavit provides an overview of the complex regulatory environment and details the licenses and other permissions granted in favour of the Just Energy Group in respect of the various jurisdictions in which it operates.
16. Certain of Just Energy's operating subsidiaries set out in **Schedule "B"** hereto are limited partnerships (collectively, the "**Just Energy LPs**"). The Just Energy LPs hold most of the regulatory licenses pursuant to which the Just Energy Group conducts business. The Just Energy LPs are not applicants in these CCAA proceedings as they are not "companies" to which the CCAA applies. Nevertheless, as the business and operations of the Just Energy LPs are heavily intertwined with that of the Applicants, the Applicants seek to have all of the protections and authorizations under the Initial Order extended to the Just Energy LPs, including the Stay of Proceedings.

² The gross margin expected to be realized over the next five years from existing customers.

17. Complying with the various regulatory regimes creates direct and indirect financial, legal and operational obligations for the Just Energy Group. Among other things, certain regulators require substantial financial collateral to be posted by entities in the Just Energy Group. Any non-compliance with the regulatory regimes, including the failure to provide sufficient collateral by a specified deadline can lead to the suspension or cancellation of the Just Energy Group's ability to operate in a particular market and, in some jurisdictions, the transfer of the Just Energy Group's customers to another energy provider. The amount of collateral required can vary depending on a number of factors including the current commodity market environment and the financial health of the Just Energy Group and, as a result, can be difficult to forecast.
18. In certain circumstances, the Just Energy Group entities have posted collateral with the regulators themselves; in other circumstances, they have arranged for collateral to be posted by third-party bonding companies (the "**Bonding Companies**"). In such circumstances, a breach of the agreement with the Bonding Companies, including failing to post additional collateral with the Bonding Companies on demand, can lead to non-compliance with the regulator's demands and consequently, the suspension or cancellation of the Just Energy Group's ability to operate in a particular market. The Proposed Monitor understands that the Bonding Companies have recently demanded over \$30 million in additional collateral be posted by the Just Energy Group as a result of, among other things, the Texas weather event. The Just Energy Group estimates as much as \$10 million remains outstanding and could be demanded upon filing.

Commodity Suppliers and ISO Supplier Relationships

19. As noted earlier, the Just Energy Group transacts with various suppliers of natural gas and electricity (collectively, the "**Commodity Suppliers**"). As detailed in the Carter Affidavit, a small group of suppliers including Shell, BP, Exelon, and Bruce Power, provides the majority of such supplies. Any disruption to continued supply by the Commodity Suppliers would materially impact the Just Energy Group's ability to carry on its business operations. Such disruption would prevent the Just

- Energy Group from entering into any further sales contracts with customers as it would be unable to properly backstop and hedge the obligations. The obligations owing to the Commodity Suppliers by the Just Energy Group are secured by security granted by Just Energy and other members of the Just Energy Group.
20. In addition to supply agreements, the Just Energy Group is also party to independent system operator (“**ISO**”) services agreements (the “**ISO Agreements**”) with certain of its Commodity Suppliers (in such capacity, the “**ISO Suppliers**”). Pursuant to the ISO Agreements, the contracting counterparty (for reasons of administrative efficiency) provides certain scheduling services as well as working capital and credit support to the Just Energy Group by making payments on its behalf to the independent system operator.

The Just Energy Group’s Capital Structure

2020 Recapitalization

21. As detailed in the Carter Affidavit, the Just Energy Group underwent a balance sheet recapitalization in 2020 (the “**Recapitalization**”) pursuant to section 192 of the *Canada Business Corporations Act* under the supervision of this Court. The Recapitalization was the culmination of extensive discussions with stakeholders over the span of a year and put the Just Energy Group on a strong financial footing.

Capital Structure

22. The Just Energy Group’s capital structure is described in detail in the Carter Affidavit. As at December 31, 2020, the aggregate book value of the Just Energy Group’s assets was approximately \$1.069 billion, and the aggregate book value of its liabilities was approximately \$1.28 billion.
23. The Just Energy Group’s debt obligations include: (i) secured obligations to its Commodity Suppliers in the approximate amount of \$198.96 million as at January 31, 2021 (the “**Trade Debt**”); and (ii) significant non-trade obligations. Below is

a chart setting out the relative priorities of the Justice Energy Groups' debt obligations, which are detailed below.

Tier	Items	Date	Approximate Amount
Tier 1	Secured Suppliers AP	March 31, 2021	\$244 million
Tier 2	Credit Facility Lenders	March 5, 2021	\$331.82 million
	Suppliers MTM (Liability Only)	March 1, 2021	\$146.17 million
	ISO Service Obligations (Subject to Cap)	March 5, 2021	\$94.5 million
Tier 3	ISO Service Obligations (In Excess of Cap)	March 5, 2021	\$77.66 million
Tier 4	Term Loan (unsecured)	December 31, 2020	\$273.48 million
Tier 5	Subordinated Notes (unsecured)	December 31, 2020	\$13.2 million

(a) Trade Debt

24. The Proposed Monitor understands that the Commodity Suppliers and the agent for the lenders under the Credit Agreement (as defined below) are party to an intercreditor agreement (the “**Intercreditor Agreement**”) that sets out the relative priorities of the parties’ security interests. In accordance with the terms of the Intercreditor Agreement, the secured Commodity Suppliers rank *pari passu* with the lenders under the Credit Agreement subject to the following waterfall as set out in the above chart: (i) accounts payable owing to the secured Commodity Suppliers rank first, (ii) the following amounts rank second and *pari passu* amongst themselves: (A) the mark-to-market (“**MTM**”) liability to the secured Commodity Suppliers, (B) amounts owing to the lenders under the Credit Agreement, and (C) amounts owing to Commodity Suppliers under the ISO Agreements up to a cap of \$94.5 million (the “**Cap**”); and (iii) ranking third, amounts owing to providers under the ISO Agreements above the Cap.
25. The significant non-trade debt obligations of the Just Energy Group are summarized as follows:

	Type	Borrower(s)	Maturity Date	Approximate Outstanding Amount as of December 31, 2020
Secured Credit Facility	Revolving credit facilities available on borrowing base	Just Energy Ontario L.P. and Just Energy (U.S.) Corp.	December 31, 2023	\$232.62 million in principal \$77.8 million in letters of credit
Term Loan	Non-revolving, multi-draw senior unsecured term loan facility	Just Energy Group Inc.	March 31, 2024	\$273.48 million
Subordinated Notes	Unsecured subordinated notes	Just Energy Group Inc.	September 27, 2026	\$13.2 million

(b) Credit Facility

26. Just Energy Ontario L.P. and Just Energy (U.S.) Corp. are borrowers under a ninth amended and restated credit agreement (the “**Credit Agreement**”) dated as of September 28, 2020 with a syndicate of lenders that includes CIBC, National Bank of Canada, HSBC, JPMorgan, Alberta Treasury Branches, Canadian Western Bank, and Morgan Stanley Senior Funding, Inc., a subsidiary of Morgan Stanley Bank N.A.
27. The Credit Agreement provides for certain scheduled mandatory commitment reductions over time.
28. As at March 5, 2021, there was approximately \$227.86 million in principal outstanding under the Credit Agreement, plus outstanding letters of credit amounting to approximately \$103.96 million.

(c) Term Loan

29. Just Energy is a borrower under a \$205.9 million unsecured principal note (the “**Term Loan Agreement**”) in favour of Sagard Credit Partners, LP and certain funds managed by a leading U.S.-based global fixed income asset manager. The Term Loan matures on March 31, 2024.
30. Pursuant to the Term Loan Agreement, interest payments are capitalized with payment of principal and accrued interest due on March 31, 2024.
31. As at December 31, 2020, approximately \$273.48 million was outstanding under the Term Loan.

(d) Subordinated Notes

32. Just Energy is also a borrower under certain subordinated unsecured notes (“**Subordinated Notes**”). As at October 19, 2020, the Subordinated Notes had a principal amount of \$13.2 million outstanding.

THE TEXAS WEATHER EVENT

33. As noted earlier herein, Texas is the Just Energy Group’s single largest market. The Texas energy market is subject to regulatory oversight by ERCOT. ERCOT’s operations, in turn, are overseen by the Public Utility Commission of Texas (“**PUCT**”).
34. The Proposed Monitor understands that the Just Energy Group’s Texas-based operating subsidiaries, in addition to purchasing supply directly from the Commodity Suppliers, purchase energy products (for subsequent resale to customers) in Texas through an ERCOT-operated wholesale electricity market. The Texas subsidiaries are directly liable to ERCOT for such electricity purchases, pursuant to and in accordance with the terms of the ERCOT protocols (the “**Protocols**”) and certain governing agreements that implement such Protocols.³

³ The Protocols are accessible at the following link: <http://www.ercot.com/mktrules/nprotocols/current>.

35. As described in greater detail in the Carter Affidavit, beginning on February 13, 2021, Texas experienced an unprecedented and catastrophic energy crisis when a powerful winter storm impacted the entire state. Being a warm-weather state, (i) the colder temperatures had the effect of causing demand for electricity to spike as residents sought to heat their homes and businesses,⁴ and (ii) certain of the state's electricity generating sources were not sufficiently winterized to withstand the cold temperatures or were unable to secure fuel with which to operate their plants and suffered critical operational shut-downs.
36. The Proposed Monitor understands that the Just Energy Group diligently hedges against potential weather risks based on historical data. For February 2021, the Just Energy Group had weather hedges in place to cover an incremental 50% increase in customer usage above the normal February consumption, which in any other year would have provided sufficient cushion against extreme weather. However, the extreme Texas weather event meant energy use on February 14, 2021 was 200% higher than the week earlier, substantially above the hedge estimates.
37. The Texas' electricity grid, by design, is largely separate from neighbouring states, so generating sources that were unable to operate could not be easily substituted by importing electricity from neighbouring markets. The combination of the spike in demand and plummeting supply pushed Texas' electric system to the brink of collapse. The Carter Affidavit details ERCOT and PUCT's hurried response to this event in order to avoid a complete shutdown of the entire grid and the operational and financial repercussions for the entire Texas electric grid that otherwise could have lasted several months.
38. The effects of ERCOT and PUCT's actions on the Texas wholesale energy market during the Texas weather event are described in detail in the Carter Affidavit. In brief, PUCT adopted an order instructing ERCOT to set wholesale energy prices at the maximum price allowed, being US\$9,000 per megawatt hour, for over 100 consecutive hours. By way of comparison, the real time electricity price did not hit

⁴ To note, most of Texas uses electric heating.

- US\$9,000/MWh for even one 15-minute interval in 2020. The winter storm and regulators' actions caused wholesale buyers to incur additional costs of approximately US\$55 billion during the 7-day period of the winter storm, equivalent to the amount the wholesale market would ordinarily incur over a four-year period.
39. The Proposed Monitor understands, as set out in the Carter Affidavit, that ERCOT and PUCT's decision to sustain an artificially high wholesale price may have contravened the Protocols and has been challenged by numerous stakeholders. The Proposed Monitor understands that there have been several appeals to PUCT and ERCOT to provide accommodations to energy providers affected by the ERCOT wholesale market price surges, including appeals by the Just Energy Group to suspend ERCOT's usual protocols. The Proposed Monitor understands that such appeals have not been successful to date.
 40. In the meantime, ERCOT has issued invoices to wholesale energy purchasers, including the Just Energy Group's Texas subsidiaries, for the entire US\$55 billion amount in additional costs. The Proposed Monitor understands that the Just Energy Group's portion of such obligation is estimated to be approximately US\$250 million. The magnitude of this financial burden has had a ripple effect through a myriad of market participants including retail energy providers, electric cooperatives and municipalities, independent power producers, and natural gas local distribution companies across the state.
 41. The Proposed Monitor understands that the Just Energy Group is disputing the amount of ERCOT's issued invoices. Nevertheless, in accordance with the Protocols, invoices issued by ERCOT must be paid in full within two days, even if the energy provider is actively disputing the invoice.
 42. ERCOT has several remedies available to it when an energy provider fails to pay in full the amount of any invoice within two days of it being issued. Principal among such remedies is ERCOT's ability to revoke all of the right of such energy provider to operate in the Texas market and to mass-transition all of such energy

- provider's Texas customers to another energy provider of last resort (a "**POLR**") on five days' notice to the energy provider (the mass-transition being, the "**POLR Process**").
43. The Proposed Monitor understands that the Just Energy Group does not have sufficient liquidity to cover its remaining unpaid obligation to ERCOT of approximately US\$123.21 million, of which approximately US\$96.24 million is required to be paid by the end of day on March 9, 2021. Additionally, on March 8, 2021, the Just Energy Group received from ERCOT (i) a notice that it must post approximately US\$25.7 million of additional collateral within two business days; and (ii) invoices totalling approximately US\$25.46 million, of which approximately US\$18.86 million is due by March 10, 2021.
 44. The Proposed Monitor understands that the Just Energy Group is unable, as a legal and practical matter, to charge and collect this unprecedented amount from its Texas customers given the fixed-rate customer billing arrangements with most of its customers.
 45. As at the date of this Report, and as described in the Carter Affidavit, the Proposed Monitor understands that one large Texas-based energy provider, Brazos Electric Power Cooperative, Inc., has already filed for relief under chapter 11 of title 11 of the United States Code, after incurring an estimated US\$2.1 billion in charges over seven days during the Texas weather event.
 46. The Proposed Monitor also understands that ERCOT (i) revoked all of the rights of two other energy providers, Griddy Energy LLC and Entrust Energy Inc., to operate in the Texas energy market after they failed to pay to ERCOT their portion of the additional US\$55 billion liability; and (ii) implemented the POLR Process in respect of both such energy providers. Without the protection afforded by the proposed Initial Order being sought by the Just Energy Group, the Just Energy Group could face similar consequences. If granted, Just Energy intends to initiate a case under Chapter 15 of Title 11 of the United States Code seeking to recognize and enforce the proposed Initial Order in the U.S.

GOING CONCERN DOUBTS AS A RESULT OF THE TEXAS WEATHER EVENT

47. As noted above, the Just Energy Group may be liable to ERCOT for an estimated US\$250 million. The Just Energy Group is disputing amounts that are owing to ERCOT. Nevertheless, if payment in full is not made to ERCOT within two days of invoices being issued, ERCOT may decide to implement a POLR Process that, the Proposed Monitor understands, would cause nearly half of the Just Energy Group's Embedded Gross Margin to dissipate and would pose significant risk to the Just Energy Group's ability to maintain going concern operations.
48. The Proposed Monitor understands that the Just Energy Group does not have sufficient liquidity to cover the amount of its estimated obligations, including the full amount of the estimated liability to ERCOT. The Just Energy Group is forecast to have negative liquidity as of March 9, 2021 primarily due to one of the aforementioned payments due to ERCOT on that date of approximately \$121.2 million.
49. In addition, on March 22, 2021, approximately \$270 million will become owing to counterparties under the ISO Agreements. This amount has increased significantly from normal levels, which is a direct result of the Texas weather event.
50. The Proposed Monitor further understands that an event of insolvency constitutes an event of default under the Just Energy Group's licences with various Canadian and U.S. regulators, as detailed in the Carter Affidavit, which causes serious concerns about the Just Energy Group's ability to continue to operate in key markets outside of Texas.
51. Likewise, upon an insolvency event, there are other material concerns about the continued supply of energy commodities from the Commodity Suppliers and immediate demands for additional collateral from the Bonding Agencies (in addition to the collateral that has already been demanded by the Bonding Companies, as noted earlier in this report). The Proposed Monitor understands that any one of these events (i.e. the loss of continuing supply or a request for additional

collateral that cannot be satisfied) could trigger cascading materially adverse results for the Just Energy Group by virtue of cross-default provisions under a number of governing agreements.

FTI'S QUALIFICATIONS TO ACT AS MONITOR

52. Paul Bishop, who will lead the FTI team and have primary carriage of this matter, is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada).
53. Since becoming engaged by the Just Energy Group, FTI has acquired knowledge of the business and operations of the Just Energy Group, including its personnel, stakeholders and the key issues in the proposed CCAA Proceedings. As a result, FTI is in a position to immediately act as Monitor in the CCAA Proceedings if appointed by this Court.
54. In September 2020, FTI was engaged by the Applicant, Just Energy Inc., to assist in assessing the quantification of potential damages relating to certain securities class actions against the company. This work is ongoing, and an ethical wall has been put in place between the FTI members assisting with the preparation of the these CCAA Proceedings and those members assisting Just Energy Inc. with the claim quantification engagement.
55. Neither FTI, nor any of its representatives, has been, at any time in the two preceding years:
 - (a) a director, officer or employee of the Just Energy Group;
 - (b) related to the Just Energy Group or to any director or officer of the Just Energy Group; or
 - (c) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the Just Energy Group.

Engagement of FTI and the Preparation of this Pre-Filing Report

56. FTI was initially engaged by the Applicants in July 2020 to assist in preparing for a potential filing under the CCAA, on a contingency basis, as they sought, successfully, to conclude the Recapitalization under the CBCA.
57. Pursuant to an engagement letter dated February 26, 2021, FTI was engaged to assist the Just Energy Group with a review of its financial position, business plan, financial projections and liquidity requirements and, if required, to assist the Just Energy Group in preparation for a filing under each of the Canadian and U.S. insolvency regimes. For the purpose of this mandate, FTI has, among other things:
- (a) participated in numerous meetings and discussions with the Just Energy Group's senior management and legal advisors in connection with the Just Energy Group's business and financial affairs generally and in connection with the preparation of the Cash Flow Forecast (as defined herein);
 - (b) participated in numerous meetings and discussions with the Just Energy Group and its counsel in connection with the requested relief in these CCAA Proceedings;
 - (c) engaged legal counsel in Canada and the U.S., who have also participated in certain of the aforementioned meetings;
 - (d) obtained and reviewed financial and other information produced by the Just Energy Group relating to its operations, cash flow forecasts and current financial situation;
 - (e) assisted the Just Energy Group in the preparation of its cashflow forecasts;
 - (f) assisted the Just Energy Group in assessing the quantum of potential claims against its directors and officers; and
 - (g) prepared this Pre-Filing Report.
58. Although this Pre-Filing Report has been prepared in anticipation of FTI's appointment as Monitor of the Just Energy Group, it has been prepared with the

same duty, care and level of diligence that FTI would have utilized had it already been appointed as Monitor.

59. In preparing this Pre-Filing Report, the Proposed Monitor has relied upon unaudited financial information of the Just Energy Group, the books and records of the Just Energy Group, certain financial information prepared by the Just Energy Group and discussions with the Just Energy Group's management. Other than as described in this section of the Pre-Filing Report, the Proposed Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Proposed Monitor expresses no opinion or other form of assurance on the information contained in Pre-Filing Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Pre-Filing Report is based on the Just Energy Group's management's assumptions regarding future events; actual results may vary from the forecast and such variations may be material.

THE JUST ENERGY GROUP'S CASH MANAGEMENT SYSTEM

60. The Just Energy Group maintains a centralized cash management system in Canada and the United States to consolidate and track funds generated by the operations of the Just Energy Group, as described more fully in the Carter Affidavit.
61. The Proposed Monitor has reviewed the Just Energy Group's cash management arrangements and confirms the importance of these systems for the continuation of the Just Energy Group's business and operations. Replacement of the cash management systems would be costly, unviable from a short-term operational perspective, and excessively time consuming. Accordingly, the Proposed Monitor supports the Just Energy Group's request to continue to operate its existing cash management systems throughout these CCAA Proceedings and supports the Just Energy Group's request to temporarily restrict the right of set-off by the lenders in order to ensure that the cash management system continues to function properly.

CASH FLOW FORECAST

62. The Just Energy Group, with the assistance of the Proposed Monitor, has prepared (i) a consolidated 13-week cash-flow forecast of its receipts and disbursements (the “**Weekly Forecast**”), and (ii) a daily cash flow forecast for the 13-day period following the filing of these CCAA Proceedings ending March 21, 2021 (the “**Daily Forecast**”, and together with the Weekly Forecast, the “**Cash Flow Forecast**”). The Cash Flow Forecast and the management’s report on the cash-flow statement as required by section 10(2)(b) of the CCAA are attached hereto as **Appendix “A”**. The Weekly Forecast and Daily Forecast are summarized as follows:

<i>(CAD\$ in millions)</i>	13-Day period ending March 21, 2021	13-Week period ending June 6, 2021
Forecast Week	Total	Total
RECEIPTS		
Sales Receipts	\$77.1	\$608.5
Miscellaneous Receipts	-	8.0
<i>Total Receipts</i>	\$77.1	\$616.5
DISBURSEMENTS		
<i>Operating Disbursements</i>		
Energy and Delivery Costs	(\$224.6)	(\$574.1)
Payroll	-	(22.3)
Taxes	(5.4)	(36.6)
Commissions	(6.3)	(27.8)
Selling and Other Costs	(6.6)	(48.4)
<i>Total Operating Disbursements</i>	(\$242.8)	(\$709.1)
OPERATING CASH FLOWS	(\$165.7)	(\$92.6)
<i>Financing Disbursements</i>		
Credit Facility - Borrowings / (Repayments)	\$126.0	\$157.5
Interest Expense & Fees	(3.2)	(7.2)
<i>Restructuring Disbursements</i>		
Professional Fees	(1.4)	(14.4)
NET CASH FLOWS	(\$44.3)	\$43.3
CASH		
Beginning Balance	\$77.3	\$77.3
Net Cash Inflows / (Outflows)	(44.3)	43.3
Other (FX)	-	-
ENDING CASH	\$33.0	\$120.7

63. The Just Energy Group's Daily Forecast indicates that during the 13-day period ending March 21, 2021, the Just Energy Group will have net cash outflows from operating activities of approximately \$165.7 million with total receipts of approximately \$77.1 million and total disbursements of approximately \$242.8 million, before borrowings of approximately \$126.0 million and professional fees of approximately \$1.4 million such that the net cash outflows are forecast to be approximately \$44.3 million.
64. The Just Energy Group's Weekly Forecast indicates that, during the 13-week cash flow period ending June 6, 2021, the Just Energy Group will have net cash outflows from operating activities of approximately \$92.6 million with total receipts of approximately \$616.5 million and total disbursements of approximately \$709.1 million, before borrowings of approximately \$157.5 million and professional fees of approximately \$14.4 million such that the net cash flows are forecast to be approximately \$43.3 million.
65. The Cash Flow Forecast incorporates the following key assumptions:
- (a) Payment to ERCOT of approximately \$151.3 million with respect to the Texas weather event due during the week ending March 14, 2021;
 - (b) Payment of certain pre-filing amounts outstanding, pending Monitor consent, including with respect to commodity delivery-related services;
 - (c) Payment of pre-filing amounts outstanding, owing to or in respect of workers providing sales and sales support for the Just Energy Group;
 - (d) An initial drawdown on the DIP Facility of approximately \$126 million on March 9, 2021 to satisfy the liquidity requirements of the Just Energy Group through to the comeback hearing; and
 - (e) Cash receipts of the Just Energy Group contemplates the ongoing collection of receivables from its customers.

66. Section 23(1)(b) of the CCAA states that the Proposed Monitor shall, “review the company’s cash-flow statement as to its reasonableness and file a report with the court on the Proposed Monitor’s findings”.
67. Pursuant to section 23(1)(b) of the CCAA and in accordance with the Canadian Association of Insolvency and Restructuring Professionals Standard of Practice 09-1, the Proposed Monitor hereby reports as follows:
- (a) the Cash Flow Forecast has been prepared by management of the Just Energy Group for the purpose described in notes to the Cash Flow Forecast, using the probable and hypothetical assumptions set out therein;
 - (b) the Proposed Monitor’s review consisted of inquiries, analytical procedures and discussion related to information supplied by certain of the management and employees of the Just Energy Group. Since hypothetical assumptions need not be supported, the Proposed Monitor’s procedures with respect to them were limited to evaluating whether they were consistent with the purposes of the Forecast. The Proposed Monitor has also reviewed the support provided by management of the Just Energy Group for the probable assumptions, and the preparation and presentation of the Cash Flow Forecast;
 - (c) based on its review, and as at the date of this Pre-Filing Report, nothing has come to the attention of the Proposed Monitor that causes it to believe that, in all material respects:
 - (i) the hypothetical assumptions are not consistent with the purposes of the Cash Flow Forecast;
 - (ii) the probable assumptions developed by management are not suitably supported and consistent with the plans of the Just Energy Group or do not provide a reasonable basis for the Cash Flow Forecast, given the hypothetical assumptions; or
 - (iii) the Cash Flow Forecast does not reflect the probable and hypothetical assumptions;

- (d) Since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, the Proposed Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. The Proposed Monitor expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Pre-Filing Report, or relied upon by the Proposed Monitor in preparing this Pre-Filing Report; and
- (e) The Cash Flow Forecast has been prepared solely for the purpose of estimating the liquidity requirements of the Just Energy Group during the forecast period. The Cash Flow Forecast should not be relied upon for any other purpose.

RELIEF SOUGHT IN INITIAL ORDER

Extending the CCAA protections to the Just Energy LPs

- 68. The Initial Order provides that the Just Energy LPs be granted all of the same protections and authorizations provided to the Applicants under the Initial Order, notwithstanding that the Just Energy LPs are not “companies” within the meaning of the CCAA.
- 69. The Proposed Monitor understands that the Just Energy LPs hold many of the permits, licenses and other regulatory permissions that permit the Just Energy Group to conduct business operations in particular jurisdictions. The Proposed Monitor further understands that the business and operations of the Applicants and the Just Energy LPs are heavily intertwined, including on a day-to-day basis.
- 70. If such entities are not granted protection under the proposed Initial Order, including in respect of any enforcement proceedings by regulators (as described below), the regulators may proceed to cancel such permits, licences or other regulatory permissions as a result of the filing of these CCAA Proceedings, which the Proposed Monitor understands would be within their rights. The effect of any

such regulator actions would have material adverse effects for the Just Energy Group, including the loss of customers or an inability to operate in a particular market.

71. For the above reasons and to ensure the stability of the Just Energy Group's operations during these CCAA Proceedings, the Proposed Monitor is of the view that the protections and other authorizations permitted to the Applicants under the Initial Order should be extended to the Just Energy LPs.

Implementing the Stay of Proceedings, including in respect of Regulators

72. The Just Energy Group is seeking the Stay of Proceedings up to and including March 19, 2021 in respect of the Just Energy Group.
73. The Just Energy Group requires the Stay of Proceedings and other protections provided by the CCAA given that the Just Energy Group is insolvent. The Stay of Proceedings is needed to maintain the *status quo* and provide time for the Just Energy Group to consider its strategic alternatives.
74. The proposed Initial Order provides that, notwithstanding section 11.1 of the CCAA, the Stay of Proceedings should apply to provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales (collectively, the "**Provincial Regulators**"), except with the written consent of the Just Energy Group and the Proposed Monitor, or leave of the Court.
75. As described in the Carter Affidavit, the Just Energy Group believes that an insolvency event or the filing of these CCAA Proceedings may cause the Provincial Regulators and U.S. Regulators (together, the "**Regulators**") to enforce certain of their rights and remedies, notwithstanding that the proposed interim financing will allow the Just Energy Group to pay the Regulators everything as and when due in the ordinary course of business. Any such enforcement would have material adverse effects for the Just Energy Group. This includes requiring additional collateral to be posted, revoking Just Energy Group's rights to operate in a particular market, or transitioning the Just Energy Group's customers in that

particular market to a competitor. Any such actions by any one Regulator could severely harm existing operations. If such actions are implemented by a group of Regulators however, or by a Regulator in respect of a particularly important market for the Just Energy Group's business, this could impair the Just Energy Group's viability to continue as a going concern.

76. Given the unique circumstances facing the Just Energy Group and the severe repercussions that could result if a Stay of Proceedings is not extended to the Regulators, the Proposed Monitor is of the view that the Regulators should be temporarily stayed from exercising their rights and remedies in accordance with the Initial Order, provided they are paid amounts owing to them in the ordinary course as planned, to provide the Just Energy Group with a stable environment in which it can seek to restructure. If necessary, this matter can be revisited at the subsequent comeback hearing.

Proposed debtor-in-possession financing

77. The Applicants are seeking approval of a term sheet (the "**DIP Agreement**") between Just Energy L.P., Just Energy Group Inc. and Just Energy (U.S.) Corp. (collectively, the "**Borrowers**") and Alter Domus (US) LLC, as administrative agent for the lenders (the "**DIP Lenders**"), pursuant to which the DIP Lenders will make a debtor-in-possession facility (the "**DIP Facility**") available to the Borrowers, subject to the terms and conditions set out in the DIP Agreement, in the maximum principal amount of US\$125 million. The obligations owing to the DIP Lenders under the DIP Facility will be guaranteed by each of the remaining Applicants (the "**Guarantors**"). The Proposed Monitor cautions that, at the current time, the DIP Agreement is still under negotiation and has not been finalized.
78. Terms not otherwise defined in this section have the meanings ascribed to them in the DIP Agreement, a copy of which will be appended as an exhibit to the Carter Affidavit.
79. The Proposed Monitor understands that the salient terms of the DIP Agreement are as follows:

- (a) **DIP Charge:** The DIP Charge (as defined below) shall have been granted in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, subject to the Permitted Priority Liens;
- (b) **Term:** The DIP Facility shall be available until the earlier of (i) December 31, 2021; (ii) the CCAA Plan Implementation Date; (iii) the expiry of the stay of proceedings; (iv) the termination of the CCAA proceedings; or (v) the acceleration of the DIP Facility in accordance with the terms of the DIP Agreement upon the occurrence and during the continuation of an Event of Default;
- (c) **Interest:** Interest accrued on the principal amounts outstanding under the DIP Facility at a rate equal to 13% per annum (which will automatically increase by an additional 2% per annum upon the occurrence of any Event of Default);
- (d) **Additional Fees:** A commitment fee in an amount equal to 1% of the Maximum Amount, along with an origination fee in an amount equal to 1% of the Maximum Amount, shall each be fully earned and payable in cash on the Closing Date;
- (e) **Use of proceeds:** The Borrowers shall use the DIP Facility solely for the purposes set out in the DIP Agreement, in each case in accordance with the CCAA Orders and Cash Flow Statements, subject to the Permitted Variance, which includes funding the general corporate and working capital requirements of the Borrowers and Guarantors. Once every four weeks, the Borrowers are required to deliver a new rolling 13-week cash flow forecast to the DIP Lenders, which shall be subject to the approval of the DIP Lenders;
- (f) **Initial Draw:** The Borrowers are required to make an initial draw under the DIP Facility in the minimum aggregate amount of US\$100 million. This amount will enable them to pay specified amounts that are known to be due

during the first 10 days of the CCAA proceedings, which are detailed in the Cash Flow Forecast; and

- (g) **Events of Default:** The DIP Agreement sets Events of Default, which include, among other things, failure to abide by specified milestones in the Loan Parties' CCAA proceedings.
80. The Just Energy Group requires such interim financing to provide stability, continue going concern operations and to restructure its business. The Applicants initially solicited interim financing terms from its five largest stakeholders, which ultimately culminated in the Just Energy Group entering into the DIP Agreement with the DIP Lenders.

Engagement of Financial Advisor

81. The Just Energy Group has engaged BMO as its Financial Advisor pursuant to an engagement letter dated February 20, 2021 (the "**Financial Advisor Engagement Letter**") which will be attached as a confidential exhibit to the Carter Affidavit. The Financial Advisor's mandate is to assist the Just Energy Group with assessing its liquidity and capital needs and reviewing potential strategic opportunities and transactions.
82. The proposed Initial Order provides that the FA Charge (as defined and described below) shall secure the Financial Advisor's post-filing fees, including any success fees in connection with finalizing a DIP loan transaction and the successful closing of a strategic transaction in accordance with the terms of the Financial Advisor Engagement Letter.
83. The Proposed Monitor has discussed with the Financial Advisor the scope, allocation and complexity of the work already undertaken by it, as well as the work remaining to be completed. The Proposed Monitor understands that the Financial Advisor does not foresee the need for any out of scope work and that post-filing fees are not duplicated for services already rendered.

84. Given the scope, nature and complexity of the Financial Advisor's role and fees charged by financial advisors in similar circumstances, the Proposed Monitor is of the view that the fees charged by the Financial Advisor are reasonable in the circumstances.
85. The Proposed Monitor supports the approval of the (i) Financial Advisor Engagement Letter, and (ii) permitting the FA Charge to secure the Financial Advisor's post-filing fees (including its work fee and success fees), subject to review by the Proposed Monitor of any invoices and the services provided by the Financial Advisor. The FA Charge is proposed to rank *pari passu* with the Administration Charge and have first priority over all other charges.

Permitting certain repayments under the Credit Agreement

86. The proposed Initial Order provides that the Just Energy Group be permitted to repay advances under the Credit Agreement for the purpose of creating availability under the LC Facility (as defined in the Credit Agreement) (an "**Advance Repayment**"), and that the Just Energy Group may utilize such availability to allow letters of credit to be issued under the Credit Agreement in order to maintain ordinary business operations. The proposed Initial Order provides that the foregoing shall be subject (i) to the consent of the Proposed Monitor with respect to any letter of credit issuance, and (ii) written confirmation from the applicable lender under the Credit Agreement that they shall issue a letter of credit of equal value to an Advance Repayment.
87. Subject to the Proposed Monitor's review and prior consent with respect to any Advance Repayment and letter of credit to be issued and the respective confirmations from lenders, the Proposed Monitor is of the view that it is reasonable and appropriate for the Just Energy Group to be permitted to make Advance Repayments and obtain letters of credit in order to sustain its business operations.

Permitting certain pre-filing payments to third parties

88. Pursuant to paragraph 7(d) of the proposed Initial Order, the Just Energy Group is entitled, but not required, to pay certain pre-filing amounts to third parties for goods or services provided to the Just Energy Group prior to these CCAA Proceedings with the consent of the Proposed Monitor and provided that such third parties are critical to the business operations of the Just Energy Group.
89. In accordance with the above, the Proposed Monitor intends to review on a case-by-case basis any pre-filing payments and will only approve such payments to be made if it decides that payment of such amounts is critical to the Just Energy Group's operations. The Proposed Monitor is of the view that these conditions are sufficient in the circumstances to permit the Just Energy Group to make pre-filing payments that satisfy these conditions.

Certain other relief for Commodity Suppliers

90. The proposed Initial Order provides that any counterparty to a Commodity Agreement⁵ or ISO Agreement⁶ that has executed or executes a Qualified Support Agreement (as defined in the proposed Initial Order) with an entity in the Just Energy Group and refrained from exercising termination rights under the Commodity Agreement as a result of the commencement of the Proceedings (as defined in the proposed Initial Order) absent an event of default under such Qualified Support Agreement (each, a “**Qualified Commodity/ISO Supplier**”), shall be entitled to a charge that secures the Just Energy Group's obligations to the Qualified Commodity/ISO Supplier.

⁵ As defined in the Initial Order: a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas or electricity.

⁶ As defined in the Initial Order: an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

91. Specifically, each Qualified Commodity/ISO Supplier shall be entitled to the benefit of a charge (the “**Priority Commodity/ISO Charge**”) on the Property in an amount equal to the value of the amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under the ISO Agreement on or before the date of the Initial Order, whether or not yet due).
92. The proposed Initial Order does not specify a limit for the Priority Commodity/ISO Charge. Instead, such charge shall secure the actual quantum of supplies provided by the Qualified Commodity/ISO Suppliers that it is intended to secure. The proposed Initial Order further provides that if a Qualified Commodity/ISO Supplier ceases to be a Qualified Commodity/ISO Supplier, it shall no longer benefit from such charge.
93. The proposed Initial Order also provides that those Qualified Support Agreements that may be entered into among the Qualified Commodity/ISO Suppliers and the Just Energy Group confirming the terms for the continued supply by the Qualified Commodity/ISO Suppliers are to be approved. The Proposed Monitor understands that certain Qualified Support Agreements are under negotiation but have not yet been finalized.
94. Pursuant to the proposed Initial Order, the Proposed Monitor, if appointed, will post a report on its website, on a monthly basis, setting out the total value of obligations to the Qualified Commodity/ISO Suppliers, thereby allowing any stakeholder concerned about the size of the secured obligation to seek an appropriate remedy at that time.

95. As the Proposed Monitor has indicated herein, the Just Energy Group relies on a small group of Commodity Suppliers and ISO Suppliers to provide critical services, including the supply of electricity that the Just Energy Group resells to customers. If any such supply or services are stopped, delayed or otherwise impaired, the Proposed Monitor believes that such actions will have a material adverse effect on the operations of the Just Energy Group.
96. Further, certain of the Commodity Agreements or ISO Agreements may be eligible financial contracts that would be subject to termination, which is why the Just Energy Group is requesting this particular relief in order to encourage the counterparties under such contracts to continue to do business with it.
97. In agreeing to continue to supply commodities and provide services under the Commodity Agreements and ISO Agreements, the counterparties are providing new value to the Applicants that will allow them to continue operating in the ordinary course of business after the date of the Initial Order. In order to protect that continued supply of goods and services, the Priority Commodity/ISO Charge secures the payment for such post-filing provision of goods and services.
98. As outlined above, there is an Intercreditor Agreement that governs the priority for payments made by the Applicants to certain counterparties and lenders. We understand that various parties may wish to seek to have the court determine the application of such Intercreditor Agreement to payments and priorities as part of these proceedings. While the Intercreditor Agreement may be relevant with respect to certain pre-filing obligations of the Applicants, given that the Commodity Agreement and ISO Agreement counterparties could terminate their existing arrangements (requiring the Applicants to attempt to find replacement suppliers which may not be practically possible), the Proposed Monitor views the continued supply and provision of services as fresh, post-filing consideration.
99. As such, the Proposed Monitor is of the view that, at least until any potential dispute on the point is properly presented for a determination by this Court:

- (a) post-filing supply of goods and services pursuant to the Commodity Agreements and ISO Agreements should be governed only by the Initial Order and should be treated as separate and apart from the certain pre-filing amounts governed by the Intercreditor Agreement; and
 - (b) entitlement to the consideration for such newly supplied goods and services under the Commodity Agreements and ISO Agreements should be for the exclusive benefit of the actual counterparty delivering such post-filing goods and services and governed by the Priority Commodity/ISO Charge.
100. For the foregoing reasons, the Proposed Monitor is of the view that the Qualified Support Agreements consistent with the terms hereof should be approved and the Priority Commodity/ISO Charge be granted.

Court-ordered charges sought in the proposed Initial Order

(i) Administration Charge

101. The Initial Order provides for a charge in the amount of up to \$2.2 million (the “**Administration Charge**”), covering the period until the comeback hearing, in favour of the Proposed Monitor, the Proposed Monitor’s Canadian and U.S. counsel, and the Just Energy Group’s Canadian and U.S. counsel as security for their professional fees and disbursements incurred both before and after the making of the Initial Order in respect of these CCAA Proceedings.
102. The Administration Charge currently only secures the fees expected to be incurred by the foregoing professionals prior to and during the initial 10-day stay period prior to the comeback hearing. The quantum of the Administration Charge has been established based on the various professionals’ previous history and experience with cross-border restructurings of similar scope and complexity. The Proposed Monitor believes that such a charge is required and reasonable in the circumstances. The Proposed Monitor will comment on the proposed amendment to increase the amount of the Administration Charge at the comeback hearing as part of a further report to this Court.

(ii) FA Charge

103. The Initial Order provides for a charge in the amount of up to \$1.8 million (the “**FA Charge**”), covering the period until the comeback hearing, in favour of the Financial Advisor as security for (i) its professional fees and disbursements incurred both before and after the making of the Initial Order in respect of these CCAA Proceedings, and (ii) any success fees earned by the Financial Advisor in accordance with the terms of the Financial Advisor Engagement Letter. The FA Charge is intended to have an equal ranking to the Administration Charge.
104. The FA Charge currently only secures the fees earned prior to and during the initial 10-day stay period prior to the comeback hearing. The Proposed Monitor will comment on the proposed amendment to increase the amount of the FA Charge at the comeback hearing as part of a further report to this Court.
105. Given the Financial Advisor’s critical role in these restructuring proceedings and in exploring strategic transaction opportunities, the Proposed Monitor is of the view that such a charge is reasonable in the circumstances.

(iii) Directors’ Charge

106. The Proposed Monitor understands that the Just Energy Group’s present and former directors and officers are among the potential beneficiaries under liability insurance policies (the “**D&O Insurance**”) that cover an aggregate annual limit of approximately \$38.5 million. The Proposed Monitor understands that there may not be sufficient coverage under the D&O Insurance, given various exceptions and exclusions thereunder and as result of claims having been made thereunder.
107. The Just Energy Group is seeking the Directors’ Charge in the amount of \$30 million with priority over all encumbrances on the Just Energy Group’s property other than the Administration Charge and the FA Charge. The Proposed Monitor was involved in determining the quantum of the Directors’ Charge.

108. The proposed Directors' Charge represents the amount applicable during the initial 10-day stay period prior to the comeback hearing. The Proposed Monitor will comment on the proposed amendment to increase the amount of the Directors' Charge at the comeback hearing as part of a further report to this Court.
109. The Proposed Monitor is of the view that the amount of the Directors' Charge is reasonable in relation to the quantum of the estimated potential liability of the Just Energy Group's directors and officers, which includes significant potential director and officer liabilities under U.S. laws, including (i) approximately \$10.2 million potential liability under U.S. laws in respect of sales taxes, and (ii) approximately \$2.9 million potential liability under U.S. laws in respect of wages, source deductions and accrued vacation. The Just Energy Group's directors and officers are only entitled to the benefit of the Directors' Charge to the extent that coverage under the D&O Insurance is insufficient.
110. The Just Energy Group's directors have the necessary background and knowledge, particularly with respect to the complex regulatory environment in which the Just Energy Group operates, to steer it through these CCAA Proceedings. The Proposed Monitor also understands that the Just Energy Group's directors have insisted on the protection of the Directors' Charge in order to remain on the board during the course of the CCAA Proceedings. For the foregoing reasons, the Proposed Monitor is of the view that the Directors' Charge is necessary to ensure that the directors stay with the Just Energy Group and assist it through these CCAA Proceedings.

(iv) DIP Charge

111. The Applicants are seeking an Order granting the DIP Lender a charge (the "**DIP Charge**") over all of the present and future assets, property and undertaking of the Applicants, in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, subject to the Administration Charge, FA Charge, Directors' Charge, KERP Charge, and shall rank *pari passu* with the Priority Commodity/ISO Charge. The DIP Charge will secure all Obligations owing to the DIP Lenders under the DIP Facility.

112. The Monitor is of the view that the DIP Facility represents the necessary financing which allows the Just Energy Group to pay certain critical payables, including to ERCOT to prevent the application of ERCOT's POLR rights, and maintain the Just Energy Groups' ongoing operations. The requested DIP Charge does not secure any advances made to the Applicants prior to the commencement of the CCAA proceedings.
113. The Monitor recommends that the Court approve the DIP Agreement, DIP Facility and accordingly, also supports the granting of the DIP Charge.

(v) KERP Charge and Employee Bonus

114. The Just Energy Group will be seeking a key employee retention plan charge (the "**KERP Charge**") as part of an amended and restated initial order to be requested at the subsequent comeback hearing. The Proposed Monitor intends to review and comment on the KERP Charge as part of a further report to the Court.
115. The Just Energy Group will also be seeking the authority to pay certain employee bonuses in the amount of approximately \$3.2 million on April 2, 2021 (the "**Employee Bonus**"). The Proposed Monitor intends to review and comment on the Employee Bonus as part of a further report to the Court.

(vi) Priority Commodity/ISO Suppliers Charge

116. As noted above, the proposed Initial Order provides for a Priority Commodity/ISO Charge in favour of Qualified Commodity/ISO Suppliers, which is intended to ensure the continuing supply of critical goods and services to the Just Energy Group. Such charge does not have a set limit. Instead, it secures the actual amounts of the obligations to the Qualified Commodity/ISO Suppliers as described earlier herein, and in strict accordance with the terms of the Initial Order.
117. Just Energy's ongoing relationship with its Commodity Suppliers and ISO Suppliers is critical to these CCAA Proceedings and the long-term viability of Just

Energy Group's operations. For this reason, the Proposed Monitor is of the view that the Priority Commodity/ISO Charge is necessary and should be granted.

Summary of the Proposed Rankings of the Court-Ordered Charges

118. If the proposed Initial Order is granted, the proposed Court-ordered charges would have the following ranking:
- (a) First – the Administration Charge in the amount of \$2.2 million and the FA Charge in the amount of \$1.8 million on a *pari passu* basis;
 - (b) Second – the Directors' Charge in the amount of \$30 million; and
 - (c) Third – the DIP Charge in in the amount of funds actually advanced under the DIP Facility and the Priority Commodity/ISO Charge on a *pari passu* basis.
119. The Proposed Monitor believes that the proposed Court-ordered charges and rankings are required and reasonable in the circumstances of these CCAA Proceedings in order to preserve the going concern operations of the Just Energy Group and maintain its enterprise value, and accordingly, supports the granting of and the proposed ranking of the charges.

CHAPTER 15 PROCEEDINGS

120. The Just Energy Group seeks authorization under the proposed Initial Order to apply for foreign recognition and approval of these CCAA proceedings in foreign jurisdictions, including the United States pursuant to the chapter 15 of Title 11 of the United States Code (the "**Chapter 15 Proceedings**"). The Initial Order provides that the Applicant, Just Energy Group Inc., is authorized to act as the foreign representative for the purpose of the Chapter 15 Proceedings.
121. The Proposed Monitor agrees that recognition of the proposed Initial Order in the United States, including the Stay of Proceedings, is necessary to preserve the going concern value of the Just Energy Group's business and further agrees that the Chapter 15 proceedings should be commenced immediately. The Proposed Monitor

has reviewed the circumstances, including facts set out in the Carter Affidavit, and agrees that Canada is the centre of main interest for the Just Energy Group.

CONCLUSION

122. The Proposed Monitor is of the view that the relief requested by the Just Energy Group pursuant to the proposed Initial Order is necessary, reasonable and justified, particularly in the context of the unprecedented challenges that have resulted from the Texas weather event. The Proposed Monitor is also of the view that granting the relief requested will provide the Just Energy Group the best opportunity to preserve value and maximize recoveries for its stakeholders.
123. The Proposed Monitor believes that the requested relief is justified by the exceptional circumstances confronting the Just Energy Group and is of the view that the Just Energy Group faces significant risks to its going concern operations if the requested relief is not granted.
124. Accordingly, the Proposed Monitor respectfully recommends that the Just Energy Group's request for the proposed Initial Order be granted.

The Proposed Monitor respectfully submits to the Court this Pre-Filing Report dated this 9th day of March, 2021.

FTI Consulting Canada Inc., in its capacity as proposed Monitor of Just Energy Group Inc. et al. and not in its personal or corporate capacity



Per: Paul Bishop
Senior Managing Director

Schedule “A”

Commodity Agreement” means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas or electricity.

“Embedded gross margin” is a standard industry term that means the gross margin expected to be realized over the next five years from existing customers.

“ERCOT” means the Electric Reliability Council of Texas, an ISO.

“FERC” means the U.S. Federal Energy Regulatory Commission.

“ISO” means an independent system operator; an independent, regulated entity established to coordinate regional transmission and ensure the safety and reliability of the electric system.

“ISO Servicing Agreement” means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

“LDC” means a local distribution company; the natural gas or electricity distributor for a regulatory or governmentally defined geographic area.

“POLR” means a provider of last resort, an energy retailer that has been selected by ERCOT to take over customers from another energy retailer that has been removed from the Texas electricity market by ERCOT.

“Protocols” means the ERCOT rules for market participants in the Texas energy market.

“PUCT” means the Public Utility Commission of Texas, a public body that oversees the ERCOT and otherwise manages the Texas utilities system.

“RCE” means residential customer equivalent, which is a unit of measurement equivalent to a customer using 2,815 m³ (or 106 GJs or 1,000 Therms or 1,025 CCFs) of natural gas on an annual basis or 10 MWh (or 10,000 kWh) of electricity on an annual basis, which represents the approximate amount of gas and electricity, respectively, used by a typical household in Ontario, Canada

**Schedule “B”
Just Energy LPs**

- 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

Appendix "A"
Cash Flow Forecast

Just Energy Group Inc. et al

CCA 13-Week Cash Flow Forecast

March 9, 2021

(CAD\$ in millions)

Weeks Ending (Sunday) ¹	3/14/21	3/21/21	3/28/21	4/4/21	4/11/21	4/18/21	4/25/21	5/2/21	5/9/21	5/16/21	5/23/21	5/30/21	6/6/21	13-Week	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	Total	
RECEIPTS															
Sales Receipts	[2]	\$28.6	\$48.5	\$46.3	\$35.2	\$44.4	\$41.8	\$67.1	\$48.3	\$48.4	\$42.6	\$60.5	\$55.1	\$41.8	\$608.5
Miscellaneous Receipts	[3]	-	-	-	2.4	-	-	-	5.6	-	-	-	-	8.0	
Total Receipts		\$28.6	\$48.5	\$46.3	\$37.6	\$44.4	\$41.8	\$67.1	\$53.9	\$48.4	\$42.6	\$60.5	\$55.1	\$41.8	\$616.5
DISBURSEMENTS															
<i>Operating Disbursements</i>															
Energy and Delivery Costs	[4]	(\$172.1)	(\$52.5)	(\$9.7)	(\$25.0)	(\$13.2)	(\$16.0)	(\$79.8)	(\$26.8)	(\$13.6)	(\$14.6)	(\$103.2)	(\$36.9)	(\$10.8)	(\$574.1)
Payroll	[5]	-	-	(2.5)	(3.2)	(2.5)	-	(2.5)	-	(2.5)	-	(2.5)	-	(6.5)	(22.3)
Taxes	[6]	(0.1)	(5.3)	(6.0)	(0.0)	(0.1)	-	(5.0)	(12.6)	-	(0.2)	(4.7)	(2.4)	(0.1)	(36.6)
Commissions	[7]	(2.2)	(4.0)	(4.5)	(0.6)	(2.5)	(0.7)	(4.8)	(0.7)	(1.4)	(0.4)	(4.5)	(0.7)	(0.6)	(27.8)
Selling and Other Costs	[8]	(3.2)	(3.4)	(3.5)	(4.5)	(5.0)	(3.5)	(3.3)	(4.1)	(4.7)	(2.9)	(3.5)	(2.9)	(4.0)	(48.4)
Total Operating Disbursements		(\$177.6)	(\$65.2)	(\$26.3)	(\$33.4)	(\$23.3)	(\$20.2)	(\$95.4)	(\$44.1)	(\$22.1)	(\$18.0)	(\$118.5)	(\$42.9)	(\$22.0)	(\$709.1)
OPERATING CASH FLOWS		(\$149.0)	(\$16.7)	\$19.9	\$4.2	\$21.1	\$21.6	(\$28.4)	\$9.7	\$26.3	\$24.6	(\$57.9)	\$12.2	\$19.8	(\$92.6)
<i>Financing Disbursements</i>															
Credit Facility - Borrowings / (Repayments)	[9]	\$126.0	\$-	\$31.5	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$157.5
Interest Expense & Fees	[10]	(3.2)	-	-	(1.4)	-	-	-	(1.3)	-	-	-	-	(1.4)	(7.2)
<i>Restructuring Disbursements</i>															
Professional Fees	[11]	-	(1.4)	(2.6)	(1.3)	(1.6)	(1.1)	(1.1)	(0.8)	(1.1)	(0.8)	(0.9)	(0.9)	(0.9)	(14.4)
NET CASH FLOWS		(\$26.2)	(\$18.1)	\$48.9	\$1.6	\$19.5	\$20.5	(\$29.5)	\$7.6	\$25.2	\$23.8	(\$58.9)	\$11.3	\$17.6	\$43.3
CASH															
Beginning Balance		\$77.3	\$51.2	\$33.0	\$81.9	\$83.5	\$103.0	\$123.5	\$94.0	\$101.6	\$126.9	\$150.6	\$91.8	\$103.1	\$77.3
Net Cash Inflows / (Outflows)		(26.2)	(18.1)	48.9	1.6	19.5	20.5	(29.5)	7.6	25.2	23.8	(58.9)	11.3	17.6	43.3
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH		\$51.2	\$33.0	\$81.9	\$83.5	\$103.0	\$123.5	\$94.0	\$101.6	\$126.9	\$150.6	\$91.8	\$103.1	\$120.7	\$120.7
BORROWING SUMMARY															
DIP Facility Credit Limit		\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5
DIP Draws		126.0	-	31.5	-	-	-	-	-	-	-	-	-	-	-
DIP Principal Outstanding		126.0	126.0	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5	157.5
DIP Availability		\$31.5	\$31.5	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-

1. The week shown as ending March 14, 2021 reflects a 6-day stub week from March 9 (the filing date) to 3/14/21.

2. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.

3. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.

4. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.

5. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of any payments associated with the Company's bonus programs.

6. Taxes reflect the remittance of sales taxes collected from customers and the Company's corporate income taxes.

7. Commissions include fees paid to customer acquisition contractors and suppliers.

8. Selling and Other Costs include selling, general, administrative and interest payments.

9. The Credit Facility Borrowings / (Repayments) assume USD\$ 100 million of the DIP is drawn immediately, with a subsequent draw for the remainder of the facility within the first few weeks of the proceedings.

10. Interest expenses & fees include interest and fees on the Company's credit facilities.

11. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, and the DIP lenders' professionals.

Just Energy Group Inc. et al

CCA 13-Day Cash Flow Forecast

March 9, 2021

(CAD\$ in millions)

		3/9/21	3/10/21	3/11/21	3/12/21	3/13/21	3/14/21	3/15/21	3/16/21	3/17/21	3/18/21	3/19/21	3/20/21	3/21/21	13-Day
Forecast Week		1	2	3	4	5	6	7	8	9	10	11	12	13	Total
RECEIPTS															
Sales Receipts	[1]	\$8.7	\$6.3	\$6.9	\$6.7	\$ -	\$ -	\$8.2	\$9.8	\$8.0	\$10.1	\$12.4	\$ -	\$ -	\$77.1
Miscellaneous Receipts	[2]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts		\$8.7	\$6.3	\$6.9	\$6.7	\$ -	\$ -	\$8.2	\$9.8	\$8.0	\$10.1	\$12.4	\$ -	\$ -	\$77.1
DISBURSEMENTS															
<i>Operating Disbursements</i>															
Energy and Delivery Costs	[3]	(\$121.2)	(\$45.8)	(\$7.9)	\$2.7	\$ -	\$ -	(\$1.8)	(\$7.0)	(\$22.6)	(\$6.1)	(\$15.0)	\$ -	\$ -	(\$224.6)
Payroll	[4]	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Taxes	[5]	-	(0.1)	-	-	-	-	(5.3)	-	-	-	-	-	-	(5.4)
Commissions	[6]	(0.0)	-	-	(2.2)	-	-	-	(0.3)	(3.2)	-	(0.6)	-	-	(6.3)
Selling and Other Costs	[7]	(1.0)	(1.0)	(0.0)	(1.0)	-	-	(0.0)	(1.1)	(1.1)	(0.0)	(1.1)	-	-	(6.6)
Total Operating Disbursements		(\$122.2)	(\$46.9)	(\$7.9)	(\$0.5)	\$ -	\$ -	(\$7.1)	(\$8.4)	(\$26.9)	(\$6.2)	(\$16.7)	\$ -	\$ -	(\$242.8)
OPERATING CASH FLOWS		(\$113.5)	(\$40.6)	(\$1.0)	\$6.1	\$ -	\$ -	\$1.1	\$1.4	(\$18.8)	\$3.9	(\$4.3)	\$ -	\$ -	(\$165.7)
<i>Financing Disbursements</i>															
Credit Facility - Borrowings / (Repayments)	[8]	\$126.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$126.0
Interest Expense & Fees	[9]	(3.2)	-	-	-	-	-	-	-	-	-	-	-	-	(3.2)
<i>Restructuring Disbursements</i>															
Professional Fees	[10]	-	-	-	-	-	-	(1.4)	-	-	-	-	-	-	(1.4)
NET CASH FLOWS		\$9.3	(\$40.6)	(\$1.0)	\$6.1	\$ -	\$ -	(\$0.4)	\$1.4	(\$18.8)	\$3.9	(\$4.3)	\$ -	\$ -	(\$44.3)
CASH															
Beginning Balance		\$77.3	\$86.7	\$46.1	\$45.0	\$51.2	\$51.2	\$51.2	\$50.8	\$52.2	\$33.4	\$37.3	\$33.0	\$33.0	\$77.3
Net Cash Inflows / (Outflows)		9.3	(40.6)	(1.0)	6.1	-	-	(0.4)	1.4	(18.8)	3.9	(4.3)	-	-	(44.3)
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-	-
ENDING CASH		\$86.7	\$46.1	\$45.0	\$51.2	\$51.2	\$51.2	\$50.8	\$52.2	\$33.4	\$37.3	\$33.0	\$33.0	\$33.0	\$33.0
BORROWING SUMMARY															
DIP Facility Credit Limit		\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$ -
DIP Draws		126.0	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Principal Outstanding		126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	126.0	-
DIP Availability		\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$31.5	\$ -

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.

2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.

3. Energy & Delivery costs reflect the purchased energy from suppliers and the cost of delivery and transmission to the Company's customers.

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7. Selling and Other Costs include selling, general, administrative and interest payments.

8. The Credit Facility Borrowings / (Repayments) assume USD\$ 100 million of the DIP is drawn immediately, with a subsequent draw for the remainder of the facility within the first few weeks of the proceedings.

9. Interest expenses & fees include interest and fees on the Company's credit facilities.

10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, and the DIP lenders' professionals.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

March 9, 2021

REPORT ON CASH FLOW STATEMENT

(Paragraph 10.2(b) of the CCAA)

The management of the Applicants has developed the assumptions and prepared the attached statement of projected cash flow as of March 9, 2021 consisting of (i) a 13-week cash flow forecast for the period March 9, 2021 to June 6, 2021 and (ii) a daily cash flow forecast for the 14-day period from March 9, 2021 to March 21, 2021 (together, the "**Forecasts**").

The purpose of the Forecasts is to estimate the liquidity requirements of the Applicants during the respective forecast periods. The hypothetical assumptions are reasonable and consistent with the purpose of the projections, and the probable assumptions are suitably supported and consistent with the plans of the Applicants and provide a reasonable basis for the Forecasts.

Since the Forecasts are based on future events, actual results will vary from the information presented and the variations may be material.

The Forecasts have been prepared solely for the purpose outlined above, using the probable and hypothetical assumptions set out in notes to the Forecasts. Consequently, readers are cautioned that the Forecasts may not be suitable for other purposes.

Dated at Houston, Texas, this 8th day of March 2021.

Michael Carter
Chief Financial Officer
Just Energy Group Inc.

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)

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

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

Proceedings commenced at Toronto

PRE-FILING REPORT OF THE PROPOSED MONITOR

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Lawyers for the proposed Monitor,
FTI Consulting Canada Inc.

*THIS IS EXHIBIT "O" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

September 8, 2021

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APPENDICES

Appendix A	Cash Flow Forecast for the period ending January 1, 2022
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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., 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**”)

THIRD REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).

2. Pursuant to the Initial Order, among other things:
 - (a) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”);
 - (b) the protections of the Initial Order, including the stay of proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”);
 - (c) FTI Consulting Canada Inc. (“**FTI**”) was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”);
 - (d) a debtor-in-possession interim financing facility was approved (the “**DIP Facility**”) in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021; and
 - (e) certain charges were granted with priority over all encumbrances on the Just Energy Entities’ property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations (the “**DIP Lenders’ Charge**”); and (B) each Commodity/ISO Supplier that has executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations (the “**Priority Commodity/ISO Charge**”).
3. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*.

4. On March 19, 2021, at the comeback hearing in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the “**First A&R Initial Order**”), which, among other things:
 - (a) extended the Stay Period to June 4, 2021;
 - (b) approved a key employee retention plan (“**KERP**”) and the KERP Charge in respect of certain Key Employees (each term as defined below);
 - (c) increased the amount of the Administration Charge, FA Charge and Directors’ Charge;
 - (d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;
 - (e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and
 - (f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor and subject to the terms of the Definitive Documents (as defined in the Amended and Restated Initial Order).

5. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States.

6. On May 26, 2021, the Court granted the Second Amended and Restated Initial Order (the “**Second A&R Initial Order**”) which, among other things:
 - (a) amended the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;

- (b) amended the definition of “Commodity Agreement” to include contracts entered into by a Just Energy Entity for protection against fluctuations in foreign currency exchanges rates; and
 - (c) amended the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021 without obtaining Court authorization in certain limited circumstances.
7. Also on May 26, 2021, the Court granted the Stay Extension Order which, among other things:
- (a) extended the Stay Period to September 30, 2021;
 - (b) approved the Monitor’s previous reports to the Court and activities described therein;
 - (c) relieved Just Energy of any obligation to call and hold an annual meeting of its shareholders until further Order of the Court; and
 - (d) authorized, but did not obligate, Just Energy (U.S.) Corp. (“**Just Energy U.S.**”) to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation was permitted to be by way of repayment of certain intercompany indebtedness, including interest.
8. This Report should be read in conjunction with the Affidavit of Michael Carter sworn September 8, 2021 (the “**Carter Affidavit**”), which is accessible on the Monitor’s Website (as defined below).
9. All references to monetary amounts in this Third Report of the Monitor (the “**Third Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Second A&R Initial Order.

10. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, are available on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy/> (the "**Monitor's Website**").
11. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

12. The purpose of this Third Report is to provide information to the Court with respect to the following:
 - (a) the Monitor's activities since the date of the Monitor's Second Report to the Court dated May 21, 2021 (the "**Second Report**");
 - (b) certain contract disclaimers issued by the Just Energy Entities with the consent of the Monitor pursuant to the CCAA;
 - (c) certain energy-related legislative developments in the state of Texas and their potential impact on the Just Energy Entities;
 - (d) details regarding a lift of the Stay of Proceedings for a limited purpose with the consent of the Just Energy Entities and the Monitor in accordance with the Second A&R Initial Order;
 - (e) details regarding discussions with commodity suppliers and agreements executed;
 - (f) details regarding the status of the Intercreditor Dispute and the Resolution Process (both as defined below);
 - (g) the status of the Just Energy Entities' restructuring initiatives;
 - (h) the relief sought by the Applicants in their proposed Order (the "**Claims Procedure Order**"), including the following relief, among other things:

- (i) approving a claims process for the identification, quantification, and resolution of Claims (as defined below) as against the Just Energy Entities and their respective directors and officers (the “**Claims Process**”);
 - (ii) authorizing the Just Energy Entities, the Monitor, the Claims Agent and the Claims Officer (each as defined below) to perform their respective obligations under the Claims Procedure Order; and
 - (iii) establishing the Claims Bar Date and the Restructuring Period Claims Bar Date (each as defined below);
- (i) the relief sought by the Applicants in their proposed Order (the “**Stay Extension and Other Relief Order**”), including approval of the following, among other things:
- (i) modifying the KERP approved in the First A&R Initial Order to permit the Just Energy Entities, in consultation with the Monitor, to reallocate unpaid KERP funds originally allocated to Key Employees (as defined below) who have resigned, or will resign, from their employment with the Just Energy Entities, or have declined, or will decline to receive payment(s) under the 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;
 - (ii) authorizing the Just Energy Entities to enter into blocked account control agreements with respect to new bank accounts opened in the ordinary course of business as part of the Just Energy Entities’ Cash Management System, provided that the blocked account control agreements and the exercise of any and all rights thereunder shall be subject to (a) the terms of the DIP Term Sheet and the rights of the DIP Agent and the DIP Lenders thereunder; and (b) the terms of the Second A&R Initial Order, including the priority of the security interests in the Property granted to holders of the various Charges pursuant to the Second A&R Initial Order; and
 - (iii) extending the Stay Period to December 17, 2021;
- (j) the Monitor’s recommendations in respect of the foregoing, as applicable;

- (k) the Just Energy Entities' actual cash receipts and disbursements for the 15-week period ending August 28, 2021 and a comparison to the cash flow forecast (the "**Revised Cash Flow Forecast**") attached as Appendix "A" to the Second Report, along with an updated cash flow forecast for the period ending December 31, 2021 (the "**Updated Cash Flow Forecast**");
- (l) approving the fees and disbursements of the Monitor and its counsel incurred in the CCAA Proceedings for the period from March 9, 2021 to August 27, 2021; and
- (m) approving the Third Report and the actions, conduct and activities of the Monitor described herein.

TERMS OF REFERENCE AND DISCLAIMER

- 13. In preparing this Third Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").
- 14. Except as otherwise described in this Third Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Third Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
- 15. Future-oriented financial information reported in or relied on in preparing this Third Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.

16. The Monitor has prepared this Third Report to provide information to the Court in connection with the relief requested by the Applicants. The Third Report should not be relied on for any other purpose.

MONITOR'S ACTIVITIES SINCE THE SECOND REPORT

17. In accordance with its duties as outlined in the Initial Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Second Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors, regarding, among other things, the CCAA Proceedings, communications with stakeholders and business operations;
 - (c) participating in multiple discussions with the Just Energy Entities, the DIP Lenders, the agent under the Credit Agreement (the “**CA Agent**”), BP Energy Company (“**BP**”) and Shell Energy North America (Canada) Inc. and certain of its related parties (collectively, “**Shell**”) and their respective counsel and advisors in respect of, among other things, the Intercreditor Dispute (as defined below) and facilitating development of an intercreditor dispute resolution process (the “**Resolution Process**”) with the input of such stakeholders;
 - (d) maintaining the service list for the CCAA Proceedings with the assistance of Thornton Grout Finnigan LLP (“**TGF**”), counsel for the Monitor, a copy of which is posted on the Monitor’s Website;
 - (e) monitoring the receipts and disbursements of the Just Energy Entities;
 - (f) working with the Just Energy Entities, their advisors, and TGF, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to possible exit strategies from the CCAA Proceedings,

- including assisting with the preparation of related cash flow forecasts and presentations;
- (iii) assist the Just Energy Entities in the preparation of the claims procedure set out in the Claims Procedure Order, including a preliminary review of potential claims by category and classification, and claims procedure design considerations;
 - (iv) determine amendments to the KERP to account for the resignations of Key Employees and the availability of funds thereunder;
 - (v) assist the Just Energy Entities in their discussions with financial institutions in respect of entering into blocked account control agreements;
 - (vi) ensure compliance with the requirements of regulators in applicable jurisdictions; and
 - (vii) consider a request to lift the Stay of Proceedings to permit recourse to the Just Energy Entities' insurance policy;
- (g) reviewing and, where applicable, approving the Just Energy Entities' disclaimers of certain contracts;
 - (h) pursuant to the terms of the Second A&R Initial Order, consulting regularly with the advisors to the CA Agent with respect to payments being made by the Just Energy Entities with the consent of the Monitor for amounts owing for goods and services rendered to the Just Energy Entities prior to the CCAA Proceedings;
 - (i) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
 - (j) responding to creditor and other stakeholder inquiries;
 - (k) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Initial Order; and
 - (l) preparing this Third Report.

CONTRACT DISCLAIMER UPDATE

18. On May 21, 2021, Just Energy U.S. disclaimed a master subscription agreement and related order form dated July 31, 2018 between it and Vlocity, Inc. as contract counterparty (the “**Vlocity Contract**”) for certain subscription-based services to enhance sales and marketing, customer experience, billing management, and other initiatives.
19. On June 2, 2021, Just Solar Holdings Corp. (“**Solar**”), a Just Energy Entity, disclaimed an Agreement of Lease dated August 30, 2016 between it, as tenant, and RA 660 White Plains Road, LLC, as landlord (the “**Solar Lease**”). The Solar Lease was sub-leased by Solar to a sub-tenant, which sub-tenant agreed to vacate the premises upon the Solar Lease being disclaimed.
20. Both the Vlocity Contract and the Solar Lease disclaimers were carried out in accordance with the provisions of the CCAA and with the consent of the Monitor. The Monitor found both disclaimers to be fair and reasonable in the circumstances, as they benefited the Just Energy Entities and enhanced the prospect of a viable restructuring. The counterparties to the disclaimed contracts have not filed an objection with the Court within the 15-day objection period specified under the CCAA.
21. The Just Energy Entities have advised the Monitor that they are continuing to consider the viability of other agreements and may seek to disclaim additional agreements subject to the Monitor’s review and approval.

TEXAS LEGISLATIVE DEVELOPMENTS

22. On June 16, 2021, the Governor of Texas signed House Bill 4492 (“**HB 4492**”), which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including the Just Energy Entities, during the Texas weather event in February 2021.
23. HB 4492 addresses the securitization of (i) ancillary service charges above the system-wide offer cap of US \$9,000/MWh during the weather event; (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. (“**ERCOT**”) during the weather event; and (iii) non-payment of amounts owed to ERCOT due to defaults by

competitive market participants, resulting in short payments to market participants, including Just Energy (collectively, the “Costs”).

24. Consistent with the requirements of HB 4492, ERCOT requested that the Public Utility Commission of Texas (the “**Commission**”) establish securitization financing mechanisms for the payment of the Costs incurred by load-serving entities, including Just Energy. The Commission is currently considering ERCOT’s request.
25. The total amount that the Just Energy Entities may recover through the mechanisms authorized in HB 4492 will depend on a number of factors, including: (i) details of financing order(s) issued by the Commission; (ii) additional ERCOT resettlements; (iii) the aggregate amount of funds sought under HB 4492 by market participants; (iv) the outcome of the dispute process initiated by the Just Energy Entities with ERCOT; and (v) any potential challenges to the HB 4492 scheme. There is therefore no assurance that Just Energy will recover all the Costs it seeks to recover through HB 4492. Just Energy continues to evaluate the potential benefits and impact of HB 4492 on an on-going basis as new or updated information becomes available.

LIFTING THE STAY OF PROCEEDINGS TO ALLOW RECOURSE TO INSURANCE

26. On June 22, 2021, the Monitor consented to lift the Stay of Proceedings in accordance with paragraph 17 of the Second A&R Initial Order and paragraph 23 of the Final Recognition Order, for the limited purpose of permitting an insurance provider to certain Just Energy Entities’ to issue payment for the reimbursement of approximately US\$400,000 of legal defense costs paid by the Just Energy Entities prior to the filing date in relation to one action in Texas and two actions in Ontario. Such consent was required to lift the Stay of Proceedings as recognized in the United States under the Final Recognition Order to enable reimbursement of the legal defence costs to the Just Energy Entities.
27. The Monitor is of the view that lifting the Stay of Proceedings for such limited purposes was fair, reasonable and beneficial to the estate of the Just Energy Entities in the circumstances.

COMMODITY SUPPLIERS

Update on Discussions with Commodity Suppliers and Agreements Executed

28. As detailed in the Second Report, the Just Energy Entities are of the view that an expanded supply base would be beneficial to the longer-term viability of their business and have canvassed the market for potential suppliers with a goal of securing a diversified and competitive group of suppliers.
29. In addition to the ISDA Master Agreement with Mercuria Energy America, LLC previously entered into by the Just Energy Entities for the supply of electricity and natural gas, the Just Energy Entities have been successful in further diversifying their commodity supply arrangements and have entered into the following arrangements for the supply of electricity and natural gas in the United States – both of which require Just Energy U.S. to provide financial support under a letter of credit or to post cash collateral:
 - (a) an ISDA Master Agreement dated April 15, 2019 as amended on July 19, 2021 with corresponding schedules and related agreements with J. Aron & Company LLC; and
 - (b) an ISDA Master Agreement dated July 30, 2021 with corresponding schedules and related agreements with Hartree Partners, LP.
30. Going forward, the Just Energy Entities intend to continue actively managing their commodity supplier arrangements to enhance the longer-term viability of the business, and will continue to identify and engage in discussions with additional potential commodity suppliers as opportunities arise.

Dispute with Commodity Suppliers

31. After the Filing Date, Skyview Finance Company, LLC (“**Skyview**”), a counterparty that previously traded in renewable energy credits with Just Energy U.S., terminated its forward contracts with Just Energy U.S. and disputed certain amounts that the Applicants contend are owing to Just Energy U.S. The Just Energy Entities and Skyview have agreed on a process to resolve their dispute and the parties have completed preparation of their

materials in this process. The Monitor is being kept apprised of the developments in the dispute process and will provide a further update to the Court at a later date.

INTERCREDITOR DISPUTE

32. As described in the Monitor's earlier reports, certain of the Just Energy Entities are party to an intercreditor agreement (the "**Intercreditor Agreement**") between certain secured commodity and ISO service suppliers (each, a "**Secured Supplier**"), including BP and Shell, and the CA Agent on behalf of certain secured lenders. The Intercreditor Agreement, among other things, sets out the relative priority of the parties' security interests.
33. Prior to the commencement of these proceedings, Just Energy was advised by BP, a Secured Supplier and a party to the Intercreditor Agreement, that it disagreed with the characterization of certain amounts due to BP as Tier 2 and Tier 3 obligations and considered such amounts to be Tier 1 obligations. The Just Energy Entities have advised BP that they consider any dispute regarding the ranking of amounts due to BP under the Intercreditor Agreement to be an intercreditor dispute (the "**Intercreditor Dispute**") and that the Just Energy Entities do not intend to take a position on the Intercreditor Dispute.
34. The Monitor understands that the potential quantum of the amount under dispute is approximately US\$200 million.
35. In order to avoid lengthy and costly litigation, the Monitor facilitated extensive discussions with, among others, BP, Shell, the CA Agent, the DIP Lenders, the Just Energy Entities and their respective financial and legal advisors (collectively, the "**Interested Parties**"), all of whom expressed an interest in the Intercreditor Dispute in order to understand the positions of such parties in respect of the Intercreditor Dispute and establish a process to resolve same.
36. The Monitor has not taken, and will not take, a position on the substance of the Intercreditor Dispute, and has assisted the Interested Parties in its capacity as an independent officer of the Court to develop the Resolution Process.
37. During the negotiation of the Resolution Process, the Monitor was advised that an entity or entities related to the DIP Lender had acquired the claim of BP against the Just Energy

Entities, which claim included the amount that was the subject of the Resolution Process. Following consultation with the Just Energy Entities, the DIP Lenders and the Monitor, the Interested Parties agreed to put the Resolution Process in abeyance while a potential restructuring solution is pursued.

38. Prior to putting the Resolution Process in abeyance, one point of dispute remained between the Interested Parties dealing with an issue regarding a potential post-award judicial review. In light of the abeyance, the Monitor is of the view that it is neither necessary to seek approval of the Resolution Process nor deal with the remaining point in dispute at this time. In the event that the discussions on the potential restructuring solution are no longer proving fruitful, or the resolution of the Intercreditor Dispute becomes otherwise required, the Monitor, in consultation with the Interested Parties now excluding BP, may bring the Resolution Process or a revised version of it before this Court for consideration.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

39. Pursuant to the DIP Term Sheet, the Just Energy Entities delivered their business plan on May 18, 2021 to the DIP Lenders and other stakeholders as required.
40. Since that time, the Just Energy Entities with the assistance of legal counsel and the Financial Advisor, and in consultation with the Monitor and the DIP Lenders, have continued their restructuring efforts with a focus on developing a restructuring plan that facilitates emergence from the CCAA Proceedings, preserves the going concern value of the business, maintains customer service and relationships, and preserves employment and critical vendor relationships – all for the benefit of the Just Energy Entities’ stakeholders.
41. To provide sufficient time to further restructuring efforts, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following:
- (a) October 7, 2021 – deadline for delivery of a term sheet for a recapitalization transaction reasonably acceptable to the DIP Lenders (the “**Recapitalization Plan**”);

- (b) November 5, 2021 – deadline for the CCAA Court to grant an order approving one or more meetings for a vote on the Recapitalization Plan and related materials, if applicable;
 - (c) December 8, 2021 – deadline for the meeting(s) to vote on the Recapitalization Plan, if applicable;
 - (d) December 17, 2021 – deadline for the CCAA Court to grant an order approving and sanctioning the Recapitalization Plan, if applicable;
42. Pursuant to the DIP Term Sheet and in connection with the restructuring efforts noted above, the Just Energy Entities with the assistance of the Financial Advisor and in consultation with the Monitor have been working to develop a recapitalization term sheet (the “**Recapitalization Term Sheet**”).
43. The Monitor understands that the Just Energy Entities are in the process of broadening the scope of such discussions to include other key stakeholders as the Recapitalization Term Sheet and the Recapitalization Plan develop.

CLAIMS PROCEDURE ORDER

44. For the purpose of this section only, any capitalized terms not defined herein have the meanings ascribed thereto in the proposed Claims Procedure Order.
45. The Just Energy Entities and the Monitor have developed the Claims Process to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their Directors and Officers in a flexible, fair, comprehensive, and expeditious manner. The Claims Process is described in detail in the Carter Affidavit. Intercreditor disputes, including the Intercreditor Dispute described above, are specifically omitted from the Claims Process.

Types of Claims

46. The following is a summary of Claims that the Just Energy Entities are soliciting in the Claims Process:

- (a) **Prefiling Claims**: any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever of such Just Energy Entity that was in existence on the Filing Date. Such Pre-Filing Claims may include, but are not limited to:
- (i) **General trade creditor claims**: any claim by contractual counterparties with respect to goods or services supplied by such counterparties to the Just Energy Entities;
 - (ii) **Customer claims**: any right or claim of any customer against any of the Just Energy Entities;
 - (iii) **Employee claims**: any right or claim of any current or former employee against any of the Just Energy Entities including, but not limited to, any claim for termination or severance pay;
 - (iv) **Litigation or class action claims**: any claim of any proposed plaintiff with respect to any potential litigation, or proposed or confirmed representative plaintiff on behalf of a class in any class action, against any of the Just Energy Entities;
 - (v) **Commodity Agreement claims**: any claim by counterparties to a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement;
 - (vi) **Tax claims**: any claim of Her Majesty the Queen in Right of Canada or of any province or territory or municipality or any other taxation authority in any Canadian or non-Canadian jurisdiction, including, without limitation, amounts which may arise or have arisen under any current or future notice of assessment, notice of objection, notice of reassessment, notice of appeal,

audit, investigation, demand or similar request from any taxation authority (“**Assessments**”);

- (vii) Equity claims: any claim in respect of an equity interest, including a claim for a dividend or similar payment, a return of capital, a redemption or retraction obligation, a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission of a purchase or sale of an equity interest, or a claim for contribution or indemnity with respect to any of the foregoing; and
- (viii) Funded debt claims: any claim in respect of funded debt for which any of the Just Energy Entities is liable.

- (b) Restructuring Period Claims: any right or claim of any Person against any of the Just Energy Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Just Energy Entity to such Person out of the restructuring, disclaimer, resiliation, termination or breach by such Just Energy Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral, and including any claim with respect to any Assessment;
- (c) Pre-Filing D&O Claims: any right or claim of any Person against one or more Directors and/or Officers arising based in whole or in part on facts that existed prior to the Filing Date, including with respect to any Assessments or any claims brought by any proposed or confirmed representative plaintiff on behalf of a class in a class action; and
- (d) Restructuring Period D&O Claims: any right or claim of any Person against one or more of the Directors and/or Officers arising after the Filing Date, including with respect to any Assessments.

47. The Claims Process does not apply to the following (collectively, “**Excluded Claims**”):
- (a) any Claim that may be asserted by any beneficiary of the Charges provided for by the Second A&R Initial Order, or any other charges granted by the Court within the CCAA Proceedings, with respect to such charge(s);

- (b) any Claim that may be asserted by any federal or provincial energy regulators, including 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, regional transmission organizations or independent system operators;
 - (c) the three class action lawsuits, including any claim for contribution or indemnity in respect of or related to such actions, enumerated within the definition of “Specified Equity Class Action Claim” in the proposed Claims Procedure Order, which claims were channeled to insurance under the CBCA Plan of Arrangement (as defined below);
 - (d) any Intercompany Claim that may be asserted against any of the Just Energy Entities by or on behalf of any of the Applicants or any of their affiliated companies, partnerships, or other corporate entities; and
 - (e) any Claim that may be asserted by any of the Just Energy Entities against any Directors and/or Officers.
48. In addition to the Excluded Claims, the definition of “Claim” also does not include any right or claim of any Person that was previously released, barred, estopped, stayed and/or enjoined pursuant to the amended and restated plan of arrangement dated September 2, 2020 (the “**CBCA Plan of Arrangement**”) under section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended, which arrangement was approved by a final order of the Court on application by Just Energy and 12175592 Canada Inc.

Claims Process and Notice

49. The Claims Process contains a negative notice process as detailed below. This process covers a majority of the Claims in terms of number of Claimants. The Claims Procedure Order sets out the categories of Claims that shall be subject to the negative notice process. All other Claimants (or potential Claimants) will be required to file a Proof of Claim as prescribed by the proposed Claims Procedure Order.
50. The negative notice process was designed to streamline the Claims Process for the Claimants and the Just Energy Entities. While the Just Energy Entities anticipate that the

vast majority of Claimants will receive Negative Notice Packages, certain Claimants may hold Claims more readily quantified directly by the Claimant. The Claims Process provides the Just Energy Entities and the Monitor with the appropriate flexibility to issue a General Claims Package, rather than a Negative Notice Claims Package, as appropriate given the size and complexity of the Just Energy Entities' business in pursuit of a fair and efficient notice process with respect to each Claimant.

51. The Monitor, or Omni Agent Solutions as claims and noticing agent (the “**Claims Agent**”), will send out a Negative Notice Claims Package to every Negative Notice Claimant. This will include a Statement of Negative Notice Claim, which sets out the Negative Notice Claimant's Claim, according to the books and records of the Just Energy Entities. Any Negative Notice Claimant that wishes to dispute the amount set out in the notice is required to dispute that claim by delivering a Notice of Dispute of Claim in accordance with the Claims Process. If the Negative Notice Claimant does not dispute the Negative Notice Claim set out in its statement, such Negative Notice Claim will be deemed accepted in accordance with the Claims Process and all dispute rights of such Negative Notice Claimant shall be forever extinguished and barred.
52. For all other Claims, a general claims process is being conducted that requires a Claimant to file its Proof of Claim and/or D&O Proof of Claim (as used herein, together “**Proof of Claim**”) with the Monitor or Claims Agent (as set out in the Claims Procedure Order and the Carter Affidavit).
53. With respect to notice, and in addition to the mailings and delivery of claims packages (either negative or general) to known potential Claimants based on the books and records of the Just Energy Entities, the parties on the Service List, and any other person who requests a claims package, the Just Energy Entities will also provide additional noticing of the Claims Process to the following (the “**Additional Notice Parties**”):
 - (a) all current employees via posting of a notice on the employee intranet site advising of the existence of the Claims Process and providing information on steps to be taken if they may hold a claim against the Just Energy Entities; and

- (b) all active vendors of the Just Energy Entities listed in their books and records as not having any existing claim against the Just Energy Entities (i.e. are owed \$0) will be sent either a General Claims Package (as defined below) or a notice advising of the existence of the Claims Process which will include instructions for accessing a General Claims Package available on the websites of the Monitor and the Claims Agent.
54. Despite the Additional Notice Parties not holding Claims pursuant to the books and records of the Just Energy Entities, the additional noticing is being undertaken for completeness purposes and to ensure the most exhaustive approach is undertaken by the Just Energy Entities for the provision of notice to interested stakeholders of the Claims Process.
55. As a final measure to ensure all Persons holding or wishing to assert a Claim against the Just Energy Entities, the Monitor shall cause notices to be put in *The Globe and Mail* (National Edition), the *Wall Street Journal*, the *Houston Chronicle*, and the *Dallas Morning News*, as soon as practicable after the date of the Claims Procedure Order. The claims package will be made available on the websites of the Monitor and the Claims Agent.
56. The Claims Process will be conducted entirely pursuant to the CCAA Proceedings, and any U.S. Claimants will be required to file their Claims in accordance with the Claims Process.

Claims Agent and Claims Officer

57. In order to assist the Just Energy Entities and the Monitor to administer the Claims Process, and to allow Claims to be submitted electronically in an expeditious and efficient manner, the Just Energy Entities have retained the Claims Agent. The Claims Agent is familiar with the matter as it is currently the U.S. noticing agent in the Chapter 15 proceedings and was also retained by the Monitor for the purpose of providing administrative support services in association with the CCAA Proceedings.
58. The Claims Agent, together with the Monitor, as applicable, will be responsible for: (a) disseminating Negative Notice Claims Packages and General Claims Packages in

accordance with the Claims Procedure Order; (b) receiving and tracking Notices of Dispute of Claim submitted by a Negative Notice Claimant disputing a Statement of Negative Notice Claim; and (c) receiving and tracking Proofs of Claim. In addition, the Claims Agent and Monitor are required under the Claims Procedure Order to post the Notice to Claimants, the General Claims Package and a blank form of Notice of Dispute of Claim to their respective websites.

59. The Claims Agent will also be responsible for opening the online claims submission portals on its website to enable the electronic submission of Proofs of Claim, and Notices of Dispute by Claimants. Claimants will be encouraged to submit documents through the Claims Agent's customized website, which will provide an efficient platform for both Claimants to submit Claims, and the Just Energy Entities, the Monitor and the Claims Agent to review, record and categorize all Claims.
60. The proposed Claims Procedure Order also seeks to appoint Mr. Edward Sellers, and such further and other persons as may be appointed from time to time by this Court on a motion by the Just Energy Entities or the Monitor, as claims officers (each, a "**Claims Officer**") for the Claims Process. Mr. Sellers is President & Managing Director of Black Swan Advisors Inc., one of Canada's pre-eminent restructuring advisors, and has extensive experience in the restructuring space. Mr. Sellers was formerly a partner with the Applicants' counsel. He ceased to be a partner with the Applicants' counsel in January of 2016.
61. The proposed Claims Procedure Order gives the Just Energy Entities, in consultation with the Monitor, the discretion to determine whether a disputed Claim should be adjudicated by the Court or by a Claims Officer. If referred to a Claims Officer, the proposed Claims Procedure Order provides that the Claims Officer shall: (a) determine the amount and characterization of the disputed Claim in accordance with the Claims Procedure Order; (b) determine whether any Claim or part thereof constitutes an Excluded Claim; (c) provide written reasons for his or her determination of the matter; and (d) determine all procedural matters which may arise in respect of his or her determination of the disputed Claim, including any participation rights for any stakeholder and the manner in which any evidence may be adduced. In addition, the Claims Procedure Order provides the Claims

Officer with the discretion to mediate any dispute and to determine by whom and to what extent the costs of any hearing or mediation before a Claims Officer shall be paid. Each party to the dispute, any other stakeholder (if applicable) and the Monitor may appeal any determination by the Claims Officer to the Court within ten (10) days of such party receiving notice of the Claims Officer's determination.

Claims Bar Dates

62. The proposed Claims Procedure Order provides that any Person asserting a Pre-Filing Claim or Pre-Filing D&O Claim or disputing a Negative Notice Claim provided to them be required to deliver to the Claims Agent or the Monitor a Proof of Claim or Notice of Dispute of Claim (in the case of Negative Notice Claimants) on or before 5:00 p.m. (Toronto time) on November 1, 2021 (the “**Claims Bar Date**”).
63. The proposed Claims Procedure Order further provides that any person asserting a Restructuring Period Claim or Restructuring Period D&O Claim be required to deliver to the Claims Agent or the Monitor a Notice of Dispute of Claim (in the case of Negative Notice Claimants) or a Proof of Claim before the later of: (i) 30 days after the date on which the Monitor or Claims Agent sends a Negative Notice Claims Package or General Claims Package, as applicable, and (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).
64. The Claims Bar Date and the Restructuring Period Claims Bar Date were selected by the Just Energy Entities, in consultation with the Monitor. The Claims Bar Date and the Restructuring Period Claims Bar Date provide sufficient time for potential Claimants to evaluate and submit any Proof of Claim or Notice of Dispute of Claim and will permit the process to continue expeditiously while the Just Energy Entities concurrently develop their restructuring plan.
65. The proposed Claims Procedure Order provides that:
 - (a) any Negative Notice Claimant who does not submit a Notice of Dispute of Claim by the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, is deemed to have accepted the amount and characterization of its Claim as set out in the Statement of Negative Notice Claim, and all rights of the Negative Notice

Claimant to dispute the Claim or otherwise assert or pursue such Claim other than as set out in the Statement of Negative Notice Claim are extinguished and barred; and

- (b) any potential Claimant (other than a Negative Notice Claimant) that does not submit a Proof of Claim by the Claims Bar Date or Restructuring Period Claims Bar Date, as applicable, is: (i) forever barred, estopped and enjoined from asserting or enforcing such Claim against the Just Energy Entities and/or their Directors and Officers, as applicable; (ii) not permitted to vote at any meeting on account of such Claim; (iii) not entitled to receive further notice with respect to the Claims Process or these CCAA Proceedings with respect to such Claim; and (iv) not permitted to participate in any distributions under any plan of arrangement or compromise or otherwise on account of such Claim.
66. Pursuant to the proposed Claims Procedure Order, the Monitor, in consultation with the Just Energy Entities, may use its reasonable discretion to determine whether to agree to accept a Claim submitted after the applicable Bar Date.

Adjudication of Claims

67. The Just Energy Entities, in consultation with the Monitor, will review and record all Notices of Dispute of Claim and Proofs of Claim that are received on or before the applicable Bar Date. If the Just Energy Entities, in consultation with the Monitor, determine that it is necessary to finally determine the amount and characterization of any or all Claims against the Just Energy Entities (or any of them) or their Directors and Officers, the Just Energy Entities, in consultation with the Monitor, will review and finally determine the amount and characterization of all such Claims asserted in any Proof of Claim or for which a Notice of Dispute of Claim has been received on or before the applicable Bar Date. Such review and determination will be completed in accordance with the adjudication and resolution process set out in the Claims Procedure Order.
68. It is not presently known whether the Just Energy Entities will be required to finally determine the amount and characterization of all Claims. The necessity to undertake such exercise will depend, among other things, on the restructuring transaction ultimately

contemplated by the Just Energy Entities, and the nature and quantum of any proposed distributions sought to be made to creditors within the CCAA Proceedings. The proposed Claims Procedure Order accordingly incorporates flexibility for the Just Energy Entities to review and, in consultation with the Monitor, finally determine all Claims on an “as needed” basis at the appropriate time.

69. In the event the Just Energy Entities, in consultation with the Monitor, determine that it is appropriate and necessary to review and finally determine the amount and characterization of any Claims, the following process will apply:
- (a) In respect of any Notice of Dispute of Claim submitted by a Negative Notice Claimant:
 - (i) if the Just Energy Entities, in consultation with the Monitor, disagree with a Claim set out in a Notice of Dispute of Claim, the Just Energy Entities and the Monitor will attempt to resolve such dispute and settle the purported Claim;
 - (ii) in the event that a dispute is not settled, the Just Energy Entities will, in consultation with the Monitor, refer the dispute to a Claims Officer or the Court for adjudication; and
 - (iii) the Monitor will send written notice of such referral to the Negative Notice Claimant.
 - (b) In respect of any Proof of Claim submitted by a Claimant:
 - (i) if the Just Energy Entities, in consultation with the Monitor with respect to a Proof of Claim, and in consultation with both the Monitor and the Directors and Officers with respect to a D&O Proof of Claim, as applicable, agree with the amount and characterization of a Claim set out in a Proof of Claim, the Monitor or Claims Agent will notify such Claimant of the acceptance of its Claim by the Just Energy Entities;
 - (ii) if the Just Energy Entities, in consultation with the Monitor, disagree with the amount or characterization of a Claim set out in a Proof of Claim, the Just Energy Entities, the Monitor and any applicable Directors and Officers

will attempt to resolve such dispute and settle the purported Claim with the Claimant;

- (iii) if the Just Energy Entities and the Monitor intend to revise or reject a Claim, the Monitor will notify the applicable Claimant that its Claim has been revised or rejected, and the reasons for such revision or rejection, by sending a Notice of Revision or Disallowance to the Claimant;
- (iv) any Claimant who wishes to dispute a Notice of Revision or Disallowance must deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for its dispute, to the Monitor by no later than thirty (30) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to in writing by the Monitor, in consultation with the Just Energy Entities. Failure to deliver a Notice of Dispute of Revision or Disallowance within the required time period will result in the Claimant's Claim being deemed to be as determined in the Notice of Revision or Disallowance;
- (v) upon receipt of a Notice of Dispute of Revision or Disallowance, and unless the dispute is settled, the Just Energy Entities will, in consultation with the Monitor and any applicable Directors and Officers, refer the dispute to a Claims Officer or the Court for adjudication; and
- (vi) the Monitor will send written notice of such election to the Claimant.

70. Pursuant to the proposed Claims Procedure Order, the Just Energy Entities are not permitted to accept or revise any portion of a D&O Claim absent the consent of the applicable Directors and Officers, or further Order of the Court.

71. Pursuant to the proposed Claims Procedure Order, the Just Energy Entities, in consultation with the Monitor, may consult with and/or provide reporting to the Consultation Parties in the review, adjudication and/or resolution of any Claims. Further, the Just Energy Entities are required to provide seven days' prior written notice to the Consultation Parties of the details of any proposed settlement or allowance of any Claim in an amount exceeding \$5 million, and any Consultation Party may seek the direction of the Court regarding any such

proposed resolution of the Claim. The Consultation Parties include the DIP Lenders and their affiliates holding secured Claims against any of the Just Energy Entities, the CA Agent and CA Lenders, Shell, and their respective counsel and financial advisors.

Summary of the Claims Process

72. The Just Energy Entities have prepared the following summary table of the Claims Process that highlights the important dates and timelines:

<u>Timeframe</u>	<u>Activity</u>
September 15, 2021	Motion for approval of Claims Procedure Order.
~ September 17, 2021 [as soon as practicable after the granting of the Claims Procedure Order]	Monitor to cause the Notice to Claimants (or a condensed version thereof) to be published in required newspapers.
~ September 17, 2021 [as soon as practicable after the granting of the Claims Procedure Order]	Monitor to cause the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Claim to be posted on the Monitor's Website.
~ September 17, 2021 [as soon as practicable after the granting of the Claims Procedure Order]	Claims Agent to cause the Notice to Claimants, the General Claims Package, and a blank form of Notice of Dispute of Claim to be posted on the Claims Agent's Website. Claims Agent to open the online claims submission portal on the Claims Agent's Website.
September 29, 2021 [10th Business Day following date of the Claims Procedure Order]	Deadline for the Monitor or Claims Agent, as applicable, to cause a Negative Notice Claims Package to be sent to every Negative Notice Claimant.
September 29, 2021 [10th Business Day following date of the Claims Procedure Order]	Deadline for the Monitor or the Claims Agent, as applicable, to cause a General Claims Package to be sent to applicable Persons.
November 1, 2021	Claims Bar Date.
Later of the following: (i) November 1, 2021; or, (ii) 30 days after the date on which the Monitor or Claims Agent sends	Restructuring Period Claims Bar Date.

<u>Timeframe</u>	<u>Activity</u>
a Negative Notice Claims Package or General Claims Package with respect to a Restructuring Period Claim or Restructuring Period D&O Claim	

73. The Just Energy Entities developed the Claims Process in consultation with its advisors and the Monitor. The Monitor is of the view that the Claims Process is fair and reasonable in the circumstances, will assist the Just Energy Entities with the development of its restructuring plan, and help to facilitate an orderly exit of the Just Energy Entities from the CCAA. Accordingly, the Monitor supports approval of the Claims Process including the appointments of the Claims Agent and Claims Officer, and recommends its approval by the Court.

AMENDMENTS TO THE KERP

74. The First A&R Initial Order approved a KERP and the granting of a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP. Among other things, the KERP authorized payments in three installments to certain senior management and other key employees of the Just Energy Entities who are required to guide the business through the restructuring process. In total, the approved KERP contemplated payments to 42 employees (the “**Key Employees**”) totaling approximately \$6.90 million.
75. Since the approval of the KERP, two Key Employees have resigned from the Just Energy Entities and one Key Employee declined to receive any payments under the KERP (collectively, the “**KERP Departees**”). The total of such foregone payments by the KERP Departees is approximately US\$0.4 million.
76. The Just Energy Entities are seeking this Court’s approval to permit the reallocation of the funds previously authorized for distribution under the KERP and foregone by the KERP Departees, in consultation with the Monitor, to either: (i) remaining Key Employees who have taken on additional responsibilities as a result of employee resignations, or (ii) other employees that the Just Energy Entities identify as critical to their ongoing business

(collectively, the “**Revised Key Employees**”). Subject to this Court’s approval, any re-allocated funds will be paid on the same terms and on the same dates or milestones as set out in the KERP.

77. The requested relief is consistent with the purpose and spirit of the KERP, and the requested reallocation of some or all of the foregone payments by the KERP Departees in consultation with the Monitor will have no financial impact on the stakeholders as the Just Energy Entities are not looking to increase the KERP or the KERP Charge. The Monitor views the relief requested by the Just Energy Entities regarding the KERP as fair and reasonable in the circumstances, and in the best interest of the Just Energy Entities. Accordingly, the Monitor supports the relief sought by the Applicants with respect to the approval of the revisions to the KERP.

BLOCKED ACCOUNT CONTROL AGREEMENTS

78. Pursuant to the terms of the Intercreditor Agreement and certain other loan agreements, the Just Energy Entities and their affiliates are barred from opening any new bank accounts, without first causing the financial institution with whom such account is maintained to enter into a blocked account control agreement (“**Account Control Agreement**”).
79. Interactive Energy Group LLC (“**IEG**”), an indirect, wholly owned subsidiary of Just Energy (U.S.) Corp., intends to establish separate bank accounts in the United States and Canada to receive and track revenues. Further new bank accounts may also be required by the Just Energy Entities in the normal course of business during the pendency of these CCAA Proceedings for similar purposes.
80. The Applicants are seeking authority for the Just Energy Entities, in consultation with the Monitor, to enter into Account Control Agreements in the ordinary course of business as part of the Just Energy Entities’ Cash Management System, provided that the Account Control Agreements and the exercise of any and all rights thereunder shall be subject to (i) the terms of the DIP Term Sheet and the rights of the DIP Agent and the DIP Lenders thereunder; and (ii) the terms of the Second A&R Initial Order, including the priority of the security interests granted to holders of the various Charges pursuant to the Second A&R Initial Order.

81. The Monitor supports the Applicants' request to enter into Account Control Agreements in the ordinary course of business subject to the conditions set out in the preceding paragraph. In the Monitor's view, the requested relief is fair and reasonable in the circumstances.

RECEIPTS AND DISBURSEMENTS FOR THE 15-WEEK PERIOD ENDED AUGUST 28, 2021

82. The Just Energy Entities' actual net cash flow for the 15-week period from May 16, 2021 to August 28, 2021, was approximately \$41.4 million better than the Revised Cash Flow Forecast appended to the Second Report as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
RECEIPTS			
Sales Receipts	\$744.9	\$729.9	(\$15.0)
Miscellaneous Receipts	3.8	1.9	(1.9)
<i>Total Receipts</i>	\$748.7	\$731.7	(\$17.0)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$688.4)	(\$651.9)	\$36.4
Payroll	(25.7)	(25.3)	0.4
Taxes	(39.8)	(27.5)	12.3
Commissions	(30.1)	(27.4)	2.6
Selling and Other Costs	(52.5)	(45.9)	6.6
<i>Total Operating Disbursements</i>	(\$836.5)	(\$778.1)	\$58.4
OPERATING CASH FLOWS	(\$87.8)	(\$46.3)	\$41.5
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(11.6)	(11.0)	0.6
<i>Restructuring Disbursements</i>			
Professional Fees	(11.1)	(11.8)	(0.7)
NET CASH FLOWS	(\$110.5)	(\$69.1)	\$41.4
CASH			
Beginning Balance	\$216.9	\$234.1	\$17.2
Net Cash Inflows / (Outflows)	(110.5)	(69.1)	41.4
Other (FX)	-	9.7	9.7
ENDING CASH	\$106.5	\$174.8	\$68.3

83. Explanations for the main variances in actual receipts and disbursements as compared to the Revised Cash Flow Forecast are as follows:

- (a) The unfavourable variance of approximately \$15.0 million in Sales Receipts is primarily comprised of the following:
 - (i) A permanent unfavourable variance of approximately \$3.1 and \$13.3 million for U.S. residential and commercial customers, respectively, primarily due to lower than anticipated energy demand as a result of mild spring and early summer weather; and
 - (ii) A permanent favourable variance of approximately \$1.4 million primarily due to higher than forecast Canadian residential and commercial customer billings relative to the Revised Cash Flow Forecast;
- (b) The unfavourable timing variance of approximately \$1.9 million of Miscellaneous Receipts is primarily due to the delayed collection of certain sales tax refunds, which are expected to be collected in a future period;
- (c) The favourable variance of approximately \$36.4 million for Energy and Delivery Costs as compared to the Revised Cash Flow Forecast is primarily driven by the following:
 - (i) A favourable variance of approximately \$42.5 million primarily due to lower commodity payments related in part to lower customer electricity usage as noted in the cash receipts comments above and higher than forecast commodity receivables collections, which were partially reduced by the set-off of approximately US\$6.1 million for certain commodity receivables;
 - (ii) A permanent favourable variance of approximately \$3.6 million due to lower than forecast transportation and delivery payments in the Revised Cash Flow Forecast due in part to lower energy transmission volumes and normal course fluctuations relative to the Revised Cash Flow Forecast; and
 - (iii) An unfavourable timing variance of approximately \$9.6 million related to credit support forecasted to be posted prior to the current 15-week period but which was actually paid in the current 15-week period;

- (d) The favourable variance of approximately \$0.4 million for Payroll is due to normal course fluctuations for various payroll tax remittances and sale incentive payments relative to the Revised Cash Flow Forecast;
- (e) The favourable variance of approximately \$12.3 million for Taxes is primarily due to the timing of estimated tax payments including an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately \$7.8 million that was forecast, but not paid, during the period. The exact timing of when this amount will be paid remains unknown, but payment at a future date will continue to be carried forward in the forecast;
- (f) The permanent favourable variance of approximately \$2.6 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions relative to the Revised Cash Flow Forecast;
- (g) The favourable timing variance of approximately \$6.6 million for Selling and Other Costs is primarily due to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;
- (h) The favourable variance of \$0.6 million for Interest Expense & Fees is primarily due to lower than forecast interest and fees owed on the Just Energy Entities' credit facilities;
- (i) The unfavourable timing variance of \$0.7 million for Professional Fees is due to higher than forecast payments of professional fee invoices during the current 15-week period; and
- (j) The favourable variance of approximately \$17.2 million in the opening cash balance is due to the variances identified in the Second Report that covered the initial two-week period of the Revised Cash Flow Forecast.

Reporting Pursuant to the DIP Term Sheet

84. The variances shown and described herein compare the Revised Cash Flow Forecast, as appended to the Second Report, with the actual performance of the Just Energy Entities over the 15-week period noted.

85. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 29, 2021, June 26, 2021, July 24, 2021, and August 21, 2021. All variances reported were within the required permitted variances.
86. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders’ approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecasts**”). The Just Energy Entities provided the required cash flow forecasts, which were approved by the DIP Lenders for the 13-week periods beginning May 30, 2021, June 27, 2021, July 25, 2021, and August 22, 2021.
87. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the Revised Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the Revised Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
88. Since the Second Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate weekly and monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;

- (e) Delivery of a Marked to Market Calculation monthly;
- (f) Delivery of the consolidated financial statements for fiscal 2021, Management's discussion and analysis on the consolidated financial statements, and related compliance certificate annually;
- (g) Delivery of the Gross Margin Calculation Certificate quarterly; and
- (h) Delivery of the modified (quarterly presentation) consolidated financial statements and related compliance certificate quarterly.

CASH FLOW FORECAST FOR THE PERIOD ENDING JANUARY 1, 2022

89. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 19-week period ending January 1, 2022 (the “**September Cash Flow Forecast**”), which encompasses the requested stay extension to December 15, 2021. The September Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized on the subsequent page:

<i>(CAD\$ in millions)</i>	13-Week Period	19-Week Period
	Ending November 20, 2021	Ending January 1, 2022
Forecast Week	Total	Total
RECEIPTS		
Sales Receipts	\$666.1	\$920.2
Miscellaneous Receipts	6.6	6.6
<i>Total Receipts</i>	\$672.7	\$926.8
DISBURSEMENTS		
<i>Operating Disbursements</i>		
Energy and Delivery Costs	(\$508.9)	(\$741.5)
ERCOT Resettlements	0.8	0.8
Payroll	(29.2)	(44.7)
Taxes	(32.0)	(42.8)
Commissions	(28.5)	(41.8)
Selling and Other Costs	(47.6)	(69.0)
<i>Total Operating Disbursements</i>	(\$645.3)	(\$939.0)
OPERATING CASH FLOWS	\$27.4	(\$12.2)
<i>Financing Disbursements</i>		
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -
Interest Expense & Fees	(10.5)	(16.9)
<i>Restructuring Disbursements</i>		
Professional Fees	(11.3)	(16.4)
NET CASH FLOWS	\$5.5	(\$45.4)
CASH		
Beginning Balance	\$142.0	\$142.0
Net Cash Inflows / (Outflows)	5.5	(45.4)
Other (FX)	-	-
ENDING CASH	\$147.5	\$96.6

90. The Revised Cash Flow Forecast indicates that during the 19-week period ending January 1, 2022, the Just Energy Entities will have net cash outflows from operating activities of approximately \$12.2 million with total receipts of approximately \$926.8 million and total disbursements of approximately \$939.0 million, before interest expense and fees of approximately \$16.9 million and professional fees of approximately \$16.4 million, such that net cash outflows are forecast to be approximately \$45.4 million. The Monitor notes that the September Cash Flow Forecast has not incorporated actual results for the week ending August 28, 2021 for presentation purposes as it reflects the current approved DIP Cash Flow Forecast. As a result, the actual ending cash balance reported in the budget to actual section above as at August 28, 2021 will not agree to the forecast cash balance reflected in the September Cash Flow Forecast as at the same date.

91. Generally, the underlying assumptions and methodology utilized in the Just Energy Entities' Cash Flow Forecast have remained the same for this Revised Cash Flow Forecast; however, the Monitor notes the following:
- (a) The forecast period was extended from the week ending October 2, 2021 to the week ending January 1, 2022;
 - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the Revised Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends and analysis;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain disbursements not incurred during the period ending August 21, 2021 have been moved forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates;
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period; and
 - (vii) The Just Energy Entities' forecast cash receipts and disbursements have been refined generally to reflect updated seasonality expectations where energy and delivery costs increase leading into and during the peak summer period. The higher energy and delivery costs during the peak period result in higher customer receipts during the later summer and early fall months as customer billings for the peak period are collected.

(c) Pursuant to the DIP Term Sheet, the DIP Facility shall be available until the earlier of certain milestone dates and December 31, 2021. For purposes of the September Cash Flow Forecast, it is assumed that the DIP Facility is not repaid and applicable arrangements will be in place to extend the DIP Facility for an additional term if so required. The Monitor understands that preliminary discussions between the Just Energy Entities and the DIP Lenders are underway should such an extension be required, and the Monitor will provide further updates in its future reports.

92. The Revised Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities have sufficient liquidity to continue funding their operations during the CCAA Proceedings to January 1, 2022.

STAY EXTENSION

93. The Stay Period will expire on September 30, 2021, and the Applicants are seeking an extension to the Stay Period up to and including December 15, 2021.

94. The Monitor supports extending the Stay Period to December 15, 2021 for the following reasons:

- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and develop their restructuring process in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and other key stakeholders;
- (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility required in order to have the best possible chance to implement a successful restructuring;
- (c) as indicated by the Updated Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
- (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and

- (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

APPROVAL OF THE ACTIVITIES OF THE MONITOR AND THE FEES OF THE MONITOR AND ITS COUNSEL

95. The Stay Extension and Other Relief Order also seeks approval of: (i) the actions, conduct, and activities of the Monitor since the date of the Stay Extension Order; (ii) the Third Report; and, (iii) the fees and disbursements of the Monitor and its counsel from the Filing Date to August 27, 2021.
96. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Second Report have been carried out in good faith and in accordance with the provisions of the orders issued therein, and should therefore be approved.
97. Pursuant to paragraphs 42 and 43 of the Second A&R Initial Order, the Monitor, TGF and Porter Hedges LLP as the Monitor's U.S. legal counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.
98. Since the Filing Date, the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from March 9, 2021 to August 27, 2021 total \$3,107,636.36, including fees in the amount of \$2,741,828.00, disbursements in the amount of \$8,292.62, and Harmonized Sales Tax ("HST") in the amount of \$357,515.74, as more particularly described in the Affidavit of Paul Bishop sworn September 8, 2021 (the "**Bishop Affidavit**"), a copy of which is attached hereto as **Appendix "B"**.

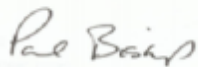
99. The total fees and disbursements of the Monitor's counsel, TGF, from March 9, 2021 to August 27, 2021 total \$1,537,317.14, including fees in the amount of \$1,315,267.50, disbursements in the amount of \$50,734.49, and HST in the amount of \$171,315.15, as more particularly described in the Affidavit of Puya Fesharaki sworn September 8, 2021 (the "**Fesharaki Affidavit**", together with the Bishop Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "C"**.
100. The total fees and disbursements of the Monitor's U.S. counsel, Porter Hedges LLP, from March 9, 2021 to August 27, 2021 total US\$157,201.37, including fees in the amount of US\$152,375.00 and disbursements in the amount of US\$4,826.37, as more particularly described in the Affidavit of John Higgins sworn September 7, 2021 (the "**Higgins Affidavit**", together with the Bishop Affidavit and Fesharaki Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "D"**.
101. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Initial Order, First A&R Initial Order and Second A&R Initial Order. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.

CONCLUSION

102. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
103. Accordingly, the Monitor respectfully recommends that the proposed Claims Procedure Process Order, and the Stay Extension and Other Relief Order be granted.

The Monitor respectfully submits to the Court this Third Report dated this 8th day of September, 2021.

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



Per: _____

Paul Bishop
Senior Managing Director

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al**
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

THIRD REPORT OF THE MONITOR

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FTI Consulting Canada Inc.

*THIS IS EXHIBIT "P" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is written in a cursive style and appears to read "D. Rosenfeld".

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

2022 SECOND QUARTER REPORT TO SHAREHOLDERS

Q2



Management's discussion and analysis - November 9, 2021

The following management's discussion and analysis ("MD&A") is a review of the financial condition and operating results of Just Energy Group Inc. ("Just Energy" or the "Company") for the three and six months ended September 30, 2021. This MD&A has been prepared with all information available up to and including November 9, 2021. This MD&A should be read in conjunction with Just Energy's unaudited Interim Condensed Consolidated Financial Statements (the "Interim Condensed Consolidated Financial Statements") for the three and six months ended September 30, 2021. The financial information contained herein has been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"). All dollar amounts are expressed in Canadian dollars unless otherwise noted. Quarterly reports, the annual report and supplementary information can be found on Just Energy's corporate website at www.investors.justenergy.com. Additional information can be found on SEDAR at www.sedar.com or on the U.S. Securities and Exchange Commission's ("SEC") website at www.sec.gov.

WEATHER EVENT AND CREDITOR PROTECTION FILINGS

In February 2021, the State of Texas experienced extremely cold weather (the "Weather Event"). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. ("ERCOT") when due, and accordingly, on March 9, 2021, Just Energy applied for and received creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") and under Chapter 15 ("Chapter 15") in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division (the "Court Orders" or "CCAA Proceedings"). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD \$125 million Debtor-In-Possession ("DIP Facility") financing with certain affiliates of Pacific Investment Management Company ("PIMCO"). The Company entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The Company entered into a Lender Support Agreement with the lenders under its Credit Facility (for details refer to note 8(c) in the Interim Condensed Consolidated Financial Statements). The filings and associated USD \$125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On September 15, 2021, the stay period under the CCAA Proceedings was extended by the Ontario Court to December 17, 2021.

On November 1, 2021, Generac Holdings Inc. ("Generac") announced the signing of an agreement to acquire all of the issued and outstanding shares of ecobee Inc. ("ecobee"), including all of the ecobee shares held by the Company. The Company holds approximately 8% of the ecobee and at closing anticipates receiving approximately \$61 million, comprised of approximately \$18 million cash and \$43 million of Generac stock. The Company can receive up to an additional approximate CAD \$10 million in Generac stock over calendar 2022 and 2023, provided that certain performance targets are achieved by ecobee. Generac stock trades on the New York Stock Exchange under the symbol GNRC. The Company has designated these investments at fair value through profit and loss under the IFRS 9, "Financial Instruments" ("IFRS 9"). As a result of the above-mentioned transaction, a fair value gain of \$29 million has been recorded in the Interim Condensed Consolidated Statement of Income in the three months ended September 30, 2021.

On November 3, 2021, the Company filed an application with the Ontario Court seeking an extension of the maturity date of the DIP Facility until September 30, 2022. The Company also requested that the stay period under the CCAA Proceedings be extended to February 17, 2022. The Ontario Court scheduled a hearing on November 10, 2021 to consider these matters.

As at September 30, 2021, in connection with the CCAA Proceedings, the Company identified \$1,032.4 million of liabilities subject to compromise (see Note 1 in the Interim Condensed Consolidated Financial Statements). The Company also recorded Reorganization Costs (defined below in Key Terms) of \$38.6 million in the six months ended September 30, 2021 (see Note 13 in the Interim Condensed Consolidated Financial Statements).

On September 15, 2021, the Ontario Court approved the Company's request to establish a claims process to identify and determine claims against the Company and its subsidiaries that are subject to the ongoing CCAA Proceedings. As a result of the establishment of the claims process, additional claims may be made against the Company and ultimately determined that are not currently reflected in the Interim Condensed Financial Statements.

The Common Shares, no par value, of the Company (the "Common Shares") are listed on the TSX Venture Exchange under the symbol "JE" and on the OTC Pink Market under the symbol "JENGO".

SECURITIZATION UNDER HOUSE BILL 4492

On June 16, 2021, Texas House Bill 4492 ("HB 4492") became law in Texas. HB 4492 provides a mechanism for recovery of (i) ancillary service charges above USD \$9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy, (collectively, the "Costs"), incurred by various parties, including the Company, during the Weather Event, through certain securitization structures.

On July 16, 2021, ERCOT filed the request with the Public Utility Commission of Texas (the "Commission") and on October 13, 2021, the Commission issued its final order (the "PUCT Order"). The ultimate amount of proceeds that Just Energy will receive has not been fully determined, as entities eligible to opt-out have until November 29, 2021 to decide pursuant to the PUCT Order. However, Just Energy anticipates that it will recover at least USD \$100 million of Costs with such proceeds expected to be received in the fourth quarter of fiscal year 2022. The total amount that the Company may recover through the PUCT Order may change materially based on a number of factors, including the entities that decide to opt-out, the outcome of the dispute resolution process initiated by the Company with ERCOT, and any potential challenges to the PUCT Order. There is no assurance that the Company will be able to recover all of the Costs.

Forward-looking information

This MD&A may contain forward-looking statements, including, without limitation, statements with respect to the Company's strategic investment in digital marketing, rebound of face-to-face retail channels following the impacts of the COVID-19 pandemic, navigating a challenging margin environment and working closely with the Company's stakeholders towards a successful restructuring plan. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks include, but are not limited to, risks with respect to the ability of the Company to continue as a going concern; the final amount received by the Company with respect to the implementation of Texas House Bill 4492 to recover certain costs incurred during the Weather Event; the outcome of any invoice dispute with the Electric Reliability Council of Texas in connection with the Weather Event; the outcome of any potential litigation with respect to the Weather Event; the outcome of the Company's proceedings under the CCAA and similar legislation in the United States; the quantum of the financial loss to the Company from the Weather Event and its impact on the Company's liquidity; the Company's restructuring discussions with key stakeholders regarding the CCAA Proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Company overview

Just Energy is a retail energy provider specializing in electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options to customers. Operating in the United States ("U.S.") and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Tara Energy and Terrapass.

Just Energy Group



*THIS IS EXHIBIT "Q" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.



Just Energy Announces ERCOT's Calculations of Recovery Amounts Under Texas House Bill 4492 of Certain Costs of the Texas Winter Weather Event

December 9, 2021

TORONTO, Dec. 09, 2021 (GLOBE NEWSWIRE) -- Just Energy Group Inc. ("Just Energy" or the "Company") (TSXV:JE; OTC:JENGQ), announced today an update of the expected recovery by Just Energy from the Electric Reliability Council of Texas, Inc. ("ERCOT") of certain costs incurred during the extreme weather event in Texas in February 2021 (the "Weather Event") as previously disclosed, which is expected to be approximately USD \$147.5 million. On December 7, 2021, ERCOT filed its calculation with the Public Utility Commission of Texas (the "PUCT") in accordance with the PUCT final order implementing Texas House Bill 4492 ("HB 4492"). ERCOT's calculations are subject to a 15-day verification period and accordingly, remain subject to change.

As previously reported, FTI Consulting Canada Inc. (the "Monitor") is overseeing the proceedings of Just Energy under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA") as the court-appointed monitor. Further information regarding the CCAA proceedings is available on the Monitor's website at <http://cfcanada.fticonsulting.com/justenergy>. Information regarding the CCAA proceedings can also be obtained by calling the Monitor's hotline at 416-649-8127 or 1-844-669-6340 or by email at justenergy@fticonsulting.com.

About Just Energy Group Inc.

Just Energy is a retail energy provider specializing in electricity and natural gas commodities and bringing energy efficient solutions, carbon offsets and renewable energy options to customers. Currently operating in the United States and Canada, Just Energy serves residential and commercial customers. Just Energy is the parent company of Amigo Energy, Filter Group, Hudson Energy, Interactive Energy Group, Tara Energy, and terrapass. Visit <https://investors.justenergy.com> to learn more.

FORWARD-LOOKING STATEMENTS

This press release may contain forward-looking statements, including with respect to the amount of cost recovery proceeds Just Energy expects to receive from ERCOT under HB 4492. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks may include, but are not limited to, risks with respect to the verification of ERCOT's calculations under HB 4492; the timing for the Company to receive any cost recovery proceeds from ERCOT; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA proceedings and similar legislation in the United States; the outcome of any potential litigation with respect to the Weather Event, the outcome of any invoice dispute with ERCOT; the Company's discussions with key stakeholders regarding the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Any forward-looking statement made by Just Energy in this press release speaks only as of the date on which it is made. Just Energy undertakes no obligation to update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

Neither TSX Venture Exchange nor its Regulation Services Provider (as that term is defined in the policies of the TSX Venture Exchange) accepts responsibility for the adequacy or accuracy of this release.

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Source: Just Energy Group Inc.

*THIS IS EXHIBIT "R" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Rosenfeld", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

February 4, 2022

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APPENDICES

- Appendix “A” Second Amended and Restated Initial Order dated May 26, 2021
- Appendix “B” Cash Flow Forecast for the period ending March 12, 2022

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

FIFTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things:

- (a) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”);
 - (b) the protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”);
 - (c) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”);
 - (d) a debtor-in-possession interim financing facility was approved in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021; and
 - (e) certain charges were granted with priority over all encumbrances on the Just Energy Entities’ property, including two third-ranking charges on a *pari passu* basis in favour of: (A) the DIP Lenders to secure all Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time up to the maximum amount of the Obligations; and (B) each Commodity/ISO Supplier that executed a Qualified Support Agreement in an amount equal to the value of the Priority Commodity/ISO Obligations.
3. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*.
4. On March 19, 2021, at the comeback hearing in the CCAA Proceedings, the Court granted the Amended and Restated Initial Order (the “**First A&R Initial Order**”), that, among other things:

- (a) extended the Stay Period to June 4, 2021;
 - (b) approved a key employee retention plan (“**KERP**”) and an associated charge as security for payments under the KERP in respect of certain key employees of the Applicants deemed critical to the continued operation and stability of the Just Energy Entities;
 - (c) increased the amount of the Administration Charge, FA Charge and Directors’ Charge;
 - (d) granted the Cash Management Charge in favour of the Cash Management Banks to secure Cash Management Obligations;
 - (e) confirmed that any obligations secured by a valid, enforceable and perfected security interest shall continue to be secured by the Property, including any Property acquired after the date of the applicable security agreement; and
 - (f) authorized the Just Energy Entities to provide cash collateral to third parties where so doing is necessary to operate the Business in the normal course, with the consent of the Monitor and subject to the terms of the Definitive Documents.
5. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the First A&R Initial Order in the United States, as may be further amended by the Court from time to time.
6. On May 26, 2021, the Court granted the Second Amended and Restated Initial Order (the “**Second A&R Initial Order**”) that, among other things:
- (a) amended the definition of “Qualified Commodity/ISO Supplier” in the Initial Order to include counterparties to a Commodity Agreement or ISO Agreement executed after the Filing Date;

- (b) amended the definition of “Commodity Agreement” to include contracts entered into by a Just Energy Entity for protection against fluctuations in foreign currency exchanges rates; and
 - (c) amended the requirements set out at paragraph 30 of the Initial Order to permit Qualified Commodity/ISO Suppliers to terminate a Commodity Agreement or Qualified Support Agreement entered into after May 26, 2021, without obtaining Court authorization in certain limited circumstances.
7. A copy of the Second A&R Initial Order is attached hereto as **Appendix “A”**.
 8. Also on May 26, 2021, the Court granted an Order that, among other things, (a) extended the Stay Period to September 30, 2021, and (b) authorized, but did not obligate, Just Energy (U.S.) Corp. to repatriate funds to the Just Energy Entities operating in Canada should it become necessary to do so to ensure sufficient working capital is held by such entities to fund their ongoing operations, which repatriation was permitted to be by way of repayment of certain intercompany indebtedness, including interest.
 9. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”). Additionally, on September 15, 2021, the Court granted an Order that, among other things, extended the Stay Period to December 17, 2021.
 10. On November 10, 2021, the Court granted an Order that, among other things, (i) authorized the Just Energy Entities to enter into the Fifteenth Amendment to the DIP Term Sheet (with amendments 1-14 having been amendments to certain milestone deadlines set out therein approved via email); (ii) approved the JE Finance Transaction (as defined therein); (iii) approved a second KERP; and (iv) extended the Stay Period to February 17, 2022.
 11. Pursuant to an order dated November 10, 2021 (the “**ecobee Support Agreement Order**”), the Court authorized (i) Just Management Corp. (“**JMC**”) to enter into a

support agreement with Generac to vote in favour of the ecobee Transaction (as such terms are defined below) (the “**Support Agreement**”), (ii) the completion of certain restructuring steps proposed to be taken by the Just Energy Entities to ensure that the sale of stock owned by JMC could be completed in a tax efficient manner, and (iii) the sale of the ecobee shares held by Just Energy as a result of the ecobee Transaction.

12. All references to monetary amounts in this Fifth Report of the Monitor (the “**Fifth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Second A&R Initial Order.
13. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, are available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
14. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, are available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

15. The purpose of this Fifth Report is to provide information to the Court with respect to the following:
 - (a) the Monitor’s activities since the Monitor’s Fourth Report to the Court dated November 5, 2021, and the supplement thereto dated November 9, 2021 (together, the “**Fourth Report**”);
 - (b) certain energy-related legislative developments in the state of Texas, including an update on House Bill 4492, and their impact on the Just Energy Entities;
 - (c) the Just Energy Entities’ restructuring initiatives;
 - (d) the Claims Procedure;

- (e) an update on the ecobee Transaction (as defined below);
- (f) the Monitor’s views in respect of the motion for advice and direction (the “**Donin/Jordet Motion**”) filed by Canadian counsel to U.S. counsel for Fira Donin and Inna Golovan in their capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”); and
- (g) the Just Energy Entities’ actual cash receipts and disbursements for the 13-week period ending January 29, 2022, and a comparison to the cash flow forecast attached as Appendix “A” to the Fourth Report, along with an updated cash flow forecast for the period ending March 12, 2022;
- (h) the relief sought by the Applicants in their proposed Order (the “**Proposed Order**”), which includes extending the Stay Period to March 4, 2022; and
- (i) the Monitor’s views in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

- 16. In preparing this Fifth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
- 17. Except as otherwise described in this Fifth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

- (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Fifth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
- 18. Future-oriented financial information reported in or relied on in preparing this Fifth Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
- 19. The Monitor has prepared this Fifth Report to provide information to the Court in connection with the relief requested by the Applicants and in response to the Donin/Jordet Motion. The Fifth Report should not be relied on for any other purpose.

MONITOR'S ACTIVITIES SINCE THE FOURTH REPORT

- 20. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Fourth Report have included the following:
 - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
 - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;
 - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
 - (e) assisting the Just Energy Entities to update and extend their cash flow forecasts;

- (f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of a plan of compromise or arrangement and related draft documents;
- (g) working with the Just Energy Entities, their advisors, and the Monitor’s counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to possible exit strategies from the CCAA Proceedings and restructuring plan, including assisting with the preparation of related cash flow forecasts and presentations; and
 - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor’s Website in accordance with the terms of the Second A&R Initial Order;
- (k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor’s Website; and
- (l) preparing this Fifth Report.

TEXAS LEGISLATIVE DEVELOPMENTS

21. As discussed in the Fourth Report, the Governor of Texas signed House Bill 4492 (“**HB 4492**”) on June 16, 2021, which provides a mechanism for the partial recovery of costs incurred by certain Texas energy market participants, including certain of the Just Energy Entities, during the Texas weather event in February 2021.

22. HB 4492 addresses the securitization of (i) ancillary service charges above the system-wide offer cap of US\$9,000/MWh during the weather event; (ii) reliability deployment price adders charged by the Electric Reliability Council of Texas, Inc. (“ERCOT”) during the weather event; and (iii) non-payment of amounts owed to ERCOT due to defaults by competitive market participants, resulting in short payments to market participants, including Just Energy (collectively, the “Costs”).
23. The Just Energy Entities had previously advised the Monitor that they anticipated recovering at least US\$100 million of the Costs from ERCOT. The Just Energy Entities have continued to monitor and evaluate the potential benefits and impact of HB 4492 and, in a press release dated December 9, 2021, announced that their expected recovery from ERCOT of the Costs has increased to approximately US\$147.5 million based on ERCOT’s calculations filed with the Public Utility Commission of Texas, representing an increase of US\$47.5 million over the previous estimate.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

24. The Just Energy Entities with the assistance of their counsel and the Financial Advisor, in consultation with the DIP Lenders (in their capacity as such, and in their capacity as assignee of the secured Claim asserted by BP Energy Company and its affiliates, and the sponsor in connection with the Recapitalization Plan (as defined below)), the Credit Facility Lenders, Shell, the lenders under the non-revolving term loan established pursuant to the Term Loan Agreement as part of the Applicants’ 2020 balance sheet recapitalization transaction (the “**Term Loan Lenders**”), and their respective legal and financial advisors, have made significant progress in developing a recapitalization term sheet (the “**Recapitalization Term Sheet**”) that provides for the recapitalization of the Just Energy Entities and their respective businesses via a plan of compromise or arrangement (the “**Recapitalization Plan**”).
25. The Recapitalization Term Sheet and Recapitalization Plan are intended to facilitate emergence from the CCAA Proceedings, preserve the going concern value of the business, maintain customer relationships, and preserve employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.

26. To provide sufficient time to advance these restructuring efforts, and finalize the Recapitalization Term Sheet and Recapitalization Plan, the Just Energy Entities have negotiated extensions to certain milestone deadlines provided for in the DIP Term Sheet including the following:
- (a) February 10, 2022 – deadline for delivery of the settled Recapitalization Term Sheet, which will form the basis of the Recapitalization Plan;
 - (b) February 17, 2022 – deadline for the Court to grant an order approving one or more meetings for a vote on the Recapitalization Plan and related materials (the “**Meeting Order**”), if applicable, and February 22, 2022, being the deadline to mail the meeting materials;
 - (c) March 15, 2022 – deadline for the U.S. Court to recognize the Meeting Order, if applicable;
 - (d) March 30, 2022 – deadline for the meeting(s) to vote on the Recapitalization Plan, if applicable;
 - (e) April 7, 2022 – deadline for the Court to grant an order approving and sanctioning the Recapitalization Plan, if applicable; and
 - (f) April 21, 2022 – deadline for U.S. Court to enter an order recognizing the order approving and sanctioning the Recapitalization Plan, if applicable.
27. The Just Energy Entities and the Monitor are hopeful that agreement on the Recapitalization Term Sheet and Recapitalization Plan can be reached in the near future. To this end, the Monitor understands that the Just Energy Entities intend to bring a motion before the Court returnable on March 3, 2022, to seek the authority to file the Recapitalization Plan and request that the Court grant the Meeting Order. The Monitor will comment on the Meeting Order and Recapitalization Plan in a future report to the Court. The Monitor notes that March 3, 2022 is after the milestone dates currently established for the Meeting Order. The Monitor understands that it is the intention of the Just Energy Entities to negotiate for an extension of the applicable milestone.

UPDATE ON CLAIMS PROCEDURE

Claims Procedure Overview

28. As noted in the Monitor's Third Report to the Court dated September 8, 2021 (a copy of which is available on the Monitor's Website), the Just Energy Entities, in consultation with the Monitor and the Claims Agent, developed the Claims Procedure to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their Directors and Officers in a flexible, fair, comprehensive, and expeditious manner. Subject to certain exceptions, the deadline to file a Proof of Claim or a Notice of Dispute of Claim (in the case of Negative Notice Claimants) was November 1, 2021 (Toronto time) (the “**Claims Bar Date**”). For the purpose of this section, any capitalized terms not defined herein have the meanings ascribed thereto in the Claims Procedure Order.
29. The Claims Procedure Order incorporated a negative notice claims process for known and quantified Claims generally, while all other Claimants not included within the definition of “Negative Notice Claimant” were required to file a Proof of Claim. To the extent that a party received a Statement of Negative Notice Claim and failed to file a Notice of Dispute of Claim, the Negative Notice Claimant’s Claim was deemed to be the amount set forth in the Statement of Negative Notice Claim.
30. Pursuant to noticing requirements and obligations of the Monitor contained within the Claims Procedure Order, the Monitor, with the assistance of the Claims Agent and the Just Energy Entities, has:
 - (a) issued approximately 1,000 Negative Notice Claims Packages to 835 Negative Notice Claimants;
 - (b) issued approximately 15,100 General Claims Packages to: (i) each person on the Service List (except Persons that are likely to assert only Excluded Claims); (ii) any Person who has requested a Proof of Claim and was not sent a Statement of Negative Notice Claim; (iii) any Person known to the Just Energy Entities or the Monitor as having a potential Claim that is not captured in any Statement of Negative Notice Claim; and (iv) any Person with a Claim arising out of the

- restructuring, disclaimer, termination or breach on or after the Filing Date of any contract, lease or other agreement;
- (c) issued approximately 3,700 notices advising of the existence of the Claims Procedure (which contained instructions for accessing a General Claims Package) to all active vendors of the Just Energy Entities listed in their books and records but not having any known Claims against the Just Energy Entities;
 - (d) caused the Notice to Claimants to be published on September 21, 2021, in the following printed publications: (i) the Global and Mail (National Edition); (ii) the Wall Street Journal; (iii) the Houston Chronicle; and (iv) the Dallas Morning News;
 - (e) posted all relevant documents with respect to the Claims Procedure on the Monitor's Website, including, but not limited to (i) the Notice to Claimants, (ii) the General Claims Package, (iii) a blank Notice of Dispute of Claim form, (iv) a blank Proof of Claim form, and (v) a blank D&O Proof of Claim form;
 - (f) received, reviewed, recorded and categorized all Notices of Dispute of Claim and Proofs of Claim that were received before, on, or after the Claims Bar Date;
 - (g) issued several Notices of Revision or Disallowance in respect of disallowed Claims prepared by the Applicants, in consultation with the Monitor;
 - (h) notified creditors of certain Claims accepted by the Just Energy Entities in consultation with the Monitor;
 - (i) engaged in numerous discussions and correspondence with various creditors that filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant, where appropriate; and
 - (j) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.
31. The Monitor has also engaged with numerous stakeholders in respect of questions that have arisen in respect of their Negative Notice Claims Package and the Claims Procedure generally.

32. The Just Energy Entities, with assistance from and in consultation with the Monitor, are in the process of completing a review of the Notices of Dispute of Claim and Proofs of Claim received, and are actively working to review, investigate, and/or resolve the various Claims as applicable.

Overview of Claims

33. Statements of Negative Notice Claim were issued to 835 Claimants, of which 15 subsequently submitted a Notice of Dispute of Claim. Additionally, there were 515 Claimants who submitted a Proof of Claim.
34. A summary of the Claims segregated by Statement of Negative Notice Claim, Notice of Dispute of Claim, Proof of Claim and category of claim, is presented in the table below. Please note that the amounts presented are inclusive of potential duplicate and/or erroneous claims and represent the total Claims recorded by the Monitor.

Category	Statement of Negative Notice		Notice of Dispute of Claim		Proof of Claim		Total Claims		
	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	Secured	Unsecured	TOTAL
<i>(amounts stated in millions of CAD)</i>									
Funded Debt	\$ 331	\$ 289	-	\$ 13	-	-	\$ 331	\$ 302	\$ 633
Commodity & Financial	472	2	2	-	377	2	852	3	855
Litigation	-	-	-	-	-	10,015	-	10,015	10,015
Tax & Unclaimed Property	-	5	-	-	0	90	0	95	95
Trade & Other	-	8	-	0	26	490	26	498	524
D&O	-	-	-	-	-	1,545	-	1,545	1,545
Total Claims Pool (Exl. Withdrawn & Rescinded Claims)	804	304	2	14	403	12,140	1,209	12,458	13,667
Withdrawn & Rescinded Claims	-	0	-	0	-	994	-	994	994
Total Claims Received	\$ 804	\$ 304	\$ 2	\$ 14	\$ 403	\$ 13,134	\$ 1,209	\$ 13,452	\$ 14,661

35. The following provides an overview of the types of Claims contained within each category:
- (a) Funded Debt: Funded Debt claims total approximately \$633 million and include all aggregate claims that relate to the Credit Facility Lenders, the Term Loan Lenders, and the Claims of the Noteholders;

- (b) Commodity & Financial: Commodity & Financial claims total approximately \$855 million and include all aggregate Claims of Commodity Suppliers as well as Claims relating to financial hedges or the purchase of renewable energy certificates;
- (c) Litigation: Litigation claims total approximately \$10,015 million and include all aggregate Claims pertaining to on-going and settled litigation;
- (d) Tax & Unclaimed Property: Tax & Unclaimed Property claims total approximately \$95 million and include all aggregate Claims of various government bodies for taxes owing at the local, state/province, and/or federal level, and also includes all claims with respect to unclaimed property owed to various U.S. states. For the Just Energy Entities, unclaimed property typically represents cheques issued prior to each state's established dormancy period, which represents the date by which a payee must deposit a cheque – generally 2 or more years;
- (e) Trade & Other: Trade & Other claims total approximately \$524 million and include all aggregate Claims of trade vendors, IT vendors, former employees, commission vendors, landlords and other. In this category, it is estimated that there are approximately \$435 million of Claims that are duplicative, which could reduce the total Claims to be resolved to approximately \$89 million if such Claims are withdrawn or successfully resolved; and
- (f) D&O Claims: D&O Claims include all Claims filed against the Directors and Officers of the Just Energy Entities. Approximately 302 D&O Proofs of Claim (including 193 “marker claims”) were recorded totaling approximately \$1,545 million. The Monitor understands that all of these D&O Claims are disputed by the Just Energy Entities. In fact, approximately \$1,436 million of these claims have now been disallowed by the Just Energy Entities, in consultation with the Monitor, and pursuant to which the deadline to file a Notice of Dispute has lapsed, resulting in \$109 million of D&O Claims remaining to be resolved.

36. As of January 31, 2022, secured claims initially recorded by the Monitor total approximately \$1,209 million, which is comprised primarily of the Just Energy Entities secured funded debt obligations and other secured supplier obligations pursuant to the

Intercreditor Agreement. Based on the review of secured claims completed by the Just Energy Entities and the Monitor and subject to final resolution of all secured claims, if necessary, pursuant to the Claims Procedure Order, it is estimated that there are approximately \$309 million of secured claims that are potentially duplicative or erroneous, which would reduce the total secured claims to be resolved to approximately \$900 million if such Claims are withdrawn or successfully resolved.

37. As of January 31, 2022, unsecured claims initially recorded by the Monitor total approximately \$13,452 million. Counsel for each of the Plaintiffs in the Donin Action and the Jordet Action filed a Proof of Claim each in the amount of US\$3,662 million, or approximately \$4,615 million (together, the “**Donin/Jordet Claims**”). Based on the review of unsecured claims completed by the Just Energy Entities and the Monitor and subject to final resolution of all unsecured claims, if necessary, pursuant to the Claims Procedure Order, it is estimated that there are approximately \$6,362 million of unsecured claims recorded (including one of the contingent Donin/Jordet Claims in the amount mentioned above) that are duplicative or erroneous. Net of withdrawn and rescinded claims of \$994 million and if the estimated duplicative or erroneous Claims of \$6,362 million are withdrawn or successfully resolved, the total unsecured Claims to be resolved would be approximately \$6,096 million.
38. The Just Energy Entities, with the assistance of the Monitor, are working to facilitate the voluntary withdrawal of duplicate and erroneous Claims submitted in an expeditious manner where possible. As of January 31, 2022, approximately \$994 million of Claims have been withdrawn or rescinded. Of the \$14,661 million total Claims received less withdrawn and rescinded Claims of \$994 million, the total remaining Claims pool is \$13,667.
39. In addition to the dollar value Claims listed in the above table and D&O “marker claims”, there are an additional 275 Proofs of Claim which are recorded as “marker claims” for amounts yet to be determined. Of these “marker claims”, 261 Proofs of Claim pertain to Claims filed by individuals who have sought to assert tort and/or similar Claims against the Just Energy Entities in relation to the Texas weather event. The

Monitor understands that all of these Claims are disputed by the Just Energy Entities. The remaining 14 “marker claims” generally pertain to Claims filed by certain governmental organizations and taxation bodies. The Just Energy Entities, in consultation with the Monitor, are working to determine and resolve these Claims.

40. The Monitor received 21 Claims totaling approximately \$9 million after the applicable Claims Bar Date (the “**Late-Filed Claims**”). The Monitor and the Just Energy Entities are in the process of reviewing the Late-Filed Claims. To the extent any further late-filed claims are submitted, the Just Energy Entities, in consultation with the Monitor, will assess those claims in light of the circumstances existing at that time.
41. The Just Energy Entities, in consultation with the Monitor, continue to assess the nature, quantum and validity of the Claims with a view to either accepting or disputing each Claim based on its merits. The Monitor will provide an update regarding the status of the Claims in a future report.

UPDATE ON ECOBEE TRANSACTION

42. As discussed in the Fourth Report, it was announced on November 1, 2021 that ecobee Inc. (“**ecobee**”), a private company in which JMC owned approximately an 8% equity interest, had agreed to sell all of its issued and outstanding shares (the “**ecobee Transaction**”) to 13462234 Canada Inc. (“**Generac**”), a wholly-owned subsidiary of Generac Power Systems, Inc., which is in turn a wholly-owned subsidiary of Generac Holdings Inc. (“**Generac Holdings**”). Generac Holdings stock trades on the New York Stock Exchange under the symbol GNRC. The sale was intended to be effected pursuant to a court approved arrangement under the *Canada Business Corporations Act*.
43. As consideration for the ecobee Transaction, Generac agreed to pay to the sellers of the ecobee shares US\$200 million cash on closing, subject to customary adjustments, and US\$450 million in Generac Holdings common stock. Additionally, upon achievement of certain performance targets between closing of the transaction and June 30, 2023, the sellers may receive a further amount up to an aggregate of US\$120 million in shares of Generac Holdings common stock.

44. Subsequent to the issuance of the ecobee Support Agreement Order, the Just Energy Entities entered into the Support Agreement with Generac and voted in favour of the ecobee Transaction.
45. The ecobee Transaction closed on or around December 1, 2021. At closing, the Just Energy Entities received approximately \$16 million in cash, which was net of certain adjustments totalling approximately \$2 million, and approximately 80,281 common shares of Generac Holdings common stock. Commencing on December 7 through December 20, 2021, as authorized pursuant to the ecobee Support Agreement Order, the Just Energy Entities monetized the common shares of Generac Holdings common stock received for cash proceeds of \$29 million, resulting in a combined total cash and share sale proceeds realized of \$45 million.

DONIN/JORDET MOTION

Background

46. As mentioned above, the Donin/Jordet Motion was filed by the plaintiffs in the Donin Action and the Jordet Action (collectively, the “**Plaintiffs**”), who purport to represent a class of putative claimants. The Plaintiffs submitted two overlapping claims against the Just Energy Entities each in the amount of approximately US\$3.66 billion, or US\$7.32 billion combined, based on the proposed and uncertified class actions. The Monitor understands that the Plaintiffs are only claiming US\$3.66 billion for the two overlapping claims, notwithstanding the fact that two duplicative claims were submitted, and that the Plaintiffs acknowledge that the damages calculation of US\$3.66 billion is a joint and composite damages claim encompassing both the Donin Action and the Jordet Action.
47. The Donin Action claims damages on behalf of a putative class of “all Just Energy customers in the United States [...] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment”. The Jordet Action claims damages on behalf of a putative class of all “Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to present”.

48. The Donin Action was filed against Just Energy and Just Energy New York Corp., and the Jordet Action was filed against Just Energy Solutions, Inc.
49. In both the Jordet Action and the Donin Action, the only claims that remain are allegations that the applicable Just Energy Entities' actions breached contractual provisions to consider "business and market conditions" and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and (in the case of the Donin Action only) electricity. All other causes of action asserted in the Donin/Jordet Actions were dismissed as part of summary dismissal orders issued by the New York Courts dated September 24, 2021 (in the Donin Action) and December 7, 2021 (in the Jordet Action).
50. In accordance with the Claims Procedure Order, counsel for each of the Plaintiffs in the Donin Action and the Jordet Action filed the Donin/Jordet Claims, which are appended as Exhibits F and G, respectively, to the Affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") included in the Donin/Jordet Motion. Upon review of the Donin/Jordet Claims, and in consultation with the Monitor, the Just Energy Entities prepared Notices of Disallowance or Revision and disallowed the Donin/Jordet Claims in their entirety for the reasons set out in such notices, which are attached as Exhibits Q and R to the Tannor Affidavit. Further details regarding the basis for the disallowances are set out in the Affidavit of Michael Carter sworn February 2, 2022 (the "**Carter Affidavit**").

Discussions with the Monitor and Responses to Information Requests

51. The Monitor has had several meetings and discussions with U.S. and Canadian counsel representing the Plaintiffs in the Donin/Jordet Actions (collectively, "**Litigation Counsel**"), and a representative of Tannor Capital Management LLC ("**Tannor Capital**"), the Plaintiffs' financial advisor, to discuss the Donin/Jordet Claims. Further, counsel to the Just Energy Entities and the Monitor received a comprehensive list of information requests on December 13, 2021 from Litigation Counsel and Tannor Capital (the "**Information Requests**"). The Information Requests are attached as Exhibit M to the Tannor Affidavit.

52. Although omitted from the Tannor Affidavit, the Monitor, in consultation with the Just Energy Entities, did prepare and provide a comprehensive and detailed response to the Information Requests, despite most of the information being publicly available. The Monitor's responses to the Information Requests were promptly provided to Litigation Counsel and Mr. Tannor on December 23, 2021, a copy of which is attached as Confidential Appendix "G" to the Carter Affidavit.

Donin/Jordet Motion

53. In the Donin/Jordet Motion, the Plaintiffs are seeking an order, among other things, declaring that they are to be unaffected by the CCAA Proceedings. In the alternative, they are seeking, among other things, (a) an order directing the implementation of a litigation schedule and process leading to the final adjudication of the Donin/Jordet Claims prior to any consideration by the Court of any plan of compromise or arrangement put forth by the Just Energy Entities, and (b) an order directing the Just Energy Entities to provide the Plaintiffs with access to any data room and access to information, or in the alternative directing the production of specified documents and information listed.
54. The Monitor does not support the Plaintiffs' request to be treated as unaffected by the CCAA Proceedings. Given the quantum of the Donin/Jordet Claims, the Monitor is of the view that these Claims (and all other litigation claims) must be affected and dealt with as part of the CCAA Proceedings to allow the Just Energy Entities to emerge from these CCAA Proceedings as a successfully restructured business. The Monitor has also been informed by the DIP Lenders (who are also the Plan Sponsor) that under no circumstances will they support a CCAA Plan which leaves these uncertified contingent claims as unaffected. The Plaintiffs are contingent creditors and there is no basis for them to be treated differently than the other contingent creditors in these CCAA Proceedings.

Adjudication Process

55. The Monitor has attempted to facilitate discussions between parties to reach a settlement on a litigation schedule and process to resolve the Donin/Jordet Claims. The Monitor has continued these efforts after the date Litigation Counsel served their motion record. A consensus has not been reached as of the date of this Fifth Report.
56. With respect to the proposed litigation schedule set out in the Donin/Jordet Motion, the Monitor understands that there are several steps that would need to take place prior to the final determination or resolution of the Donin/Jordet Claims, including, without limitation, the following:
- (a) discovery and production in respect of the Jordet Action;
 - (b) the exchange of any expert reports;
 - (c) a summary judgment motion or motions;
 - (d) a class certification hearing prior to a determination on the merits, as the putative class actions are currently uncertified;
 - (e) pre-trial steps, such as a pre-trial case conference;
 - (f) a trial on the merits; and
 - (g) the exercise of any potential appeal rights.
57. Given the complex nature and the early stages of the underlying litigation and size of the claims being alleged, the Monitor is of the view that the adjudication timeline proposed by the Plaintiffs is far too brief and not achievable from the outset. Rather, the Monitor is supportive of a more realistic adjudication schedule spanning approximately twelve months before a Claims Officer, as was proposed by the Just Energy Entities.
58. Further, the Monitor is of the view that it is unreasonable to delay the entire restructuring process of the Just Energy Entities to resolve one outstanding contingent litigation claim.

59. The Just Energy Entities' business is complex and requires diligent, focused management. The CCAA Proceedings have imposed considerable additional demands and responsibilities on management as they combine day to day responsibilities with the pursuit of a restructuring of the Just Energy Entities. In the Monitor's view, seeking adjudication of the Donin/Jordet Claims on the timeline proposed by the Plaintiffs would unduly impede the ability of management and key employees to focus their time and attention on achieving a successful restructuring for the benefit of all stakeholders.
60. Accordingly, the Monitor does not support the proposed adjudication process set forth in the Donin/Jordet Motion.

Information Requests and Recapitalization Plan Discussions

61. With respect to the documents and other information requested by the Plaintiffs, the Monitor intends to work with the Just Energy Entities and the Plaintiffs to facilitate and resolve such outstanding information and document requests as may be reasonable and appropriate in the circumstances.
62. The Plaintiffs have requested to be privy to the Recapitalization Plan discussions. The Monitor understands that only the Just Energy Entities' key stakeholders (which comprise the DIP Lenders, the Credit Facility Lenders, Shell and other key non-contingent creditors including the Term Loan Lenders) are privy to such discussions at this time. Further, the Plaintiffs are contingent uncertified creditors and the Monitor confirms that no contingent litigation creditor is privy to the discussions in respect of the Recapitalization Plan. Rather, the Plaintiffs will have the benefit of reviewing and considering any such Recapitalization Plan when it is put forth to all creditors for consideration. The Monitor notes that it is not a requirement that a debtor in a CCAA proceeding involve all of its creditors when developing a restructuring proposal and does not support the Plaintiffs' request for such involvement.

RECEIPTS AND DISBURSEMENTS FOR THE 13-WEEK PERIOD ENDED JANUARY 29, 2022

63. The Just Energy Entities' actual net cash flow for the 13-week period from October 31, 2021 to January 29, 2022, was approximately \$33.9 million worse than the Cash Flow Forecast appended to the Fourth Report (the “**November Cash Flow Forecast**”) as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
RECEIPTS			
Sales Receipts	\$614.2	\$599.4	(\$14.7)
Miscellaneous Receipts	67.6	52.2	(15.3)
<i>Total Receipts</i>	\$681.7	\$651.7	(\$30.1)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$491.3)	(\$548.3)	(\$57.0)
ERCOT Resettlements	-	-	-
Payroll	(32.5)	(29.0)	3.5
Taxes	(31.8)	(22.6)	9.2
Commissions	(24.0)	(23.8)	0.3
Selling and Other Costs	(49.9)	(35.4)	14.5
<i>Total Operating Disbursements</i>	(\$629.5)	(\$659.1)	(\$29.6)
OPERATING CASH FLOWS	\$52.2	(\$7.4)	(\$59.6)
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(12.8)	(11.0)	1.8
<i>Restructuring Disbursements</i>			
Professional Fees	(10.8)	(14.8)	(4.0)
NET CASH FLOWS	\$28.7	(\$33.2)	(\$61.8)
CASH			
Beginning Balance	\$137.1	\$164.7	\$27.6
Net Cash Inflows / (Outflows)	28.7	(33.2)	(61.8)
Other (FX)	-	0.4	0.4
ENDING CASH	\$165.8	\$131.9	(\$33.9)

64. Explanations for the main variances in actual receipts and disbursements as compared to the November Cash Flow Forecast are as follows:

- (a) The unfavourable variance of approximately \$14.7 million in Sales Receipts is primarily comprised of the following:
- (i) An unfavourable variance of approximately \$19.4 million in respect of U.S. residential customers, respectively, related to timing and also related to lower than anticipated energy demand and customer acquisitions;
 - (ii) A permanent favourable variance of approximately \$10.8 million in respect of U.S. commercial customers, primarily driven by the impact of higher market prices on variable rate customer contracts, offset by higher Energy & Delivery Costs; and
 - (iii) A permanent unfavourable variance of approximately \$6.1 million primarily due to lower than forecast Canadian residential and commercial customer billings;
- (b) The unfavourable permanent variance of approximately \$15.3 million of Miscellaneous Receipts is primarily due to lower than anticipated proceeds from the sale of stock received in the ecobee Transaction due to a decline in the stock price of Generac;
- (c) The unfavourable variance of approximately \$57 million in respect of Energy and Delivery Costs is primarily driven by the following:
- (i) An unfavourable variance of approximately \$40.3 million primarily due to higher than forecast commodity and collateral payments related to increased pricing during the period; and
 - (ii) A permanent unfavourable variance of approximately \$16.7 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;
- (d) The favourable variance of approximately \$3.5 million in respect of Payroll is due to normal course fluctuations for various payroll tax remittances and sale incentive payments;

- (e) The favourable variance of approximately \$9.2 million in respect of Taxes is primarily due to the timing of estimated tax payments including an estimated sales tax reassessment payment owing by the Just Energy Entities of approximately \$7.8 million that was forecast, but not paid, during the period. This payment will be removed from future forecasts since it is now expected to be resolved as part of the Claims Procedure;
- (f) The permanent favourable variance of approximately \$0.3 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions;
- (g) The favourable timing variance of approximately \$14.5 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors;
- (h) The favourable variance of \$1.8 million in respect of Interest Expense & Fees is primarily due to lower than forecast interest and fees owed on the Just Energy Entities' credit facilities; and
- (i) The unfavourable timing variance of \$4.0 million in respect of Professional Fees is due to higher than forecast payments of professional fee invoices during the current 13-week period primarily resulting from increased services rendered by professionals with respect to the development and negotiation of the Restructuring Plan and adjudication of Claims pursuant to the Claims Procedure.

Reporting Pursuant to the DIP Term Sheet

- 65. The variances shown and described herein compare the November Cash Flow Forecast, as appended to the Fourth Report, with the actual performance of the Just Energy Entities over the 13-week period noted.
- 66. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of

Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week periods ended May 29, 2021; June 26, 2021; July 24, 2021; August 21, 2021; September 18, 2021; October 16, 2021; November 13, 2021; December 11, 2021; and January 8, 2022. All variances reported were within the permitted variances.

67. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the "**DIP Cash Flow Forecasts**"). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week periods beginning May 30, 2021; June 27, 2021; July 25, 2021; August 22, 2021; September 19, 2021; October 17, 2021; November 14, 2021; December 12, 2021; and January 9, 2022.
68. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the November Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the November Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
69. Since the Fourth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
 - (a) Delivery of a Priority Supplier Payables Certificate monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;

- (e) Delivery of a Gross Margin Calculation Certificate update quarterly;
- (f) Delivery of Consolidated Financial Statements and related documents update quarterly;
- (g) Delivery of a Marked to Market Calculation monthly; and
- (h) Delivery of Electricity and Natural Gas Portfolio Reports, Hedging Exposure and Supply/Demand Projections quarterly.

CASH FLOW FORECAST FOR THE PERIOD ENDING MARCH 12, 2022

70. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 6-week period ending March 12, 2022 (the “**February Cash Flow Forecast**”), which encompasses the requested stay extension to March 4, 2022. The February Cash Flow Forecast is attached hereto as **Appendix “B”**, and is summarized below:

<i>(CAD\$ in millions)</i>	6-Week Ending March 12, 2022
Forecast Week	Total
RECEIPTS	
Sales Receipts	\$349.1
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$349.1
DISBURSEMENTS	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$257.3)
Payroll	(15.7)
Taxes	(11.2)
Commissions	(12.0)
Selling and Other Costs	(19.1)
<i>Total Operating Disbursements</i>	(\$315.3)
OPERATING CASH FLOWS	\$33.8
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(1.9)
<i>Restructuring Disbursements</i>	
Professional Fees	(8.4)
NET CASH FLOWS	\$23.5
CASH	
Beginning Balance	\$131.9
Net Cash Inflows / (Outflows)	23.5
Other (FX)	-
ENDING CASH	\$155.4

71. The February Cash Flow Forecast indicates that during the 6-week period ending March 12, 2022, the Just Energy Entities will have operating cash inflows of approximately \$33.8 million with total receipts of approximately \$349.1 million and total disbursements of approximately \$315.3 million, before interest expense and fees of approximately \$1.9 million and professional fees of approximately \$8.4 million, such that net cash inflows are forecast to be approximately \$23.5 million.
72. Generally, the underlying assumptions and methodology utilized in the November Cash Flow Forecast have remained the same for this February Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending February 19, 2022 to the week ending March 12, 2022;
- (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the February Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.

73. The February Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to March 4, 2022.

STAY EXTENSION

74. The Stay Period will expire on February 17, 2022, and the Applicants are seeking a short extension to the Stay Period up to and including March 4, 2022.

75. The Monitor supports extending the Stay Period to March 4, 2022 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to consider and hopefully finalize the Recapitalization Plan in an effort to achieve a going concern solution in consultation with the Financial Advisor, the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;
 - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to give the Just Energy Entities the flexibility and time required in order to develop and commence steps to implement a successful restructuring;
 - (c) as indicated by the February Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
 - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
 - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

APPROVAL OF THE ACTIVITIES OF THE MONITOR

76. The Proposed Order also seeks approval of the Fifth Report and the actions, conduct, and activities of the Monitor since the date of Fourth Report.
77. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Fourth Report have been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.

CONCLUSION

78. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
79. Accordingly, the Monitor respectfully supports the requested relief in the Proposed Order and recommends that such Order be granted.
80. Further, the Monitor respectfully does not support the relief requested in the Donin/Jordet Motion and recommends that such motion be dismissed.

The Monitor respectfully submits to the Court this Fifth Report dated this 4th day of February, 2022.

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



Per: _____

Paul Bishop
Senior Managing Director

APPENDIX “A”

Second Amended and Restated Initial Order dated May 26, 2021

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 26 TH
)	
JUSTICE KOEHNEN)	DAY OF MAY, 2021

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

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

SECOND AMENDED AND RESTATED INITIAL ORDER

(amending the Initial Order dated March 9, 2021, as amended and restated on March 19, 2021)

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.



ON READING the affidavit of Michael Carter sworn March 9, 2021 and the Exhibits thereto (the “**First Carter Affidavit**”), the affidavit of Michael Carter sworn March 16, 2021 and the Exhibits thereto (the “**Second Carter Affidavit**”), the affidavit of Michael Carter sworn March 18, 2021 and the Exhibits thereto (the “**Third Carter Affidavit**”), the affidavit of Margaret Munnelly sworn March 16, 2021 and the Exhibits thereto (the “**Munnelly Affidavit**”), the affidavit of Michael Carter sworn May 19, 2021 and the Exhibits thereto, the pre-filing report of the proposed monitor, FTI Consulting Canada Inc. (“**FTI**”), dated March 9, 2021, the First Report of FTI in its capacity as the Court-appointed monitor of the Applicants (the “**Monitor**”) dated March 18, 2021, the Second Report of the Monitor dated May 21, 2021, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and the partnerships listed in Schedule “A” hereto (the “**JE Partnerships**”, and collectively with the Applicants, the “**Just Energy Entities**”), the Monitor, Alter Domus (US) LLC (the “**DIP Agent**”), as administrative agent for the lenders (the “**DIP Lenders**”) under the DIP Term Sheet (as defined below), the DIP Lenders and such other counsel who were present, and on reading the consent of FTI to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in Schedule “B” hereto or the First Carter Affidavit, as applicable, if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, the JE Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”)

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Just Energy Entities shall remain in possession and control of their respective current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Just Energy Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Just Energy Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, staffing agencies, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that:

- (a) the Just Energy Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the First Carter Affidavit or, with the consent of the Monitor, the DIP Agent and the DIP Lenders, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (a “**Cash Management Bank**”) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Just Energy Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Just Energy Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

- Management System, an unaffected creditor under any Plan with regard to Cash Management Obligations. All present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever to a Cash Management Bank under, in connection with, relating to or with respect to any and all agreements and arrangements evidencing or in respect of treasury facilities and cash management products (including, without limitation, all pre-authorized debit banking services, electronic funds transfer services, overdraft balances, corporate credit cards, merchant services and pre-authorized debits) provided by a Cash Management Bank to any Just Energy Entity, and any unpaid balance thereof, are collectively referred to herein as the “**Cash Management Obligations**”;
- (b) during the Stay Period (as defined below), no Cash Management Bank shall, without leave of this Court: (i) exercise any sweep remedy under any applicable documentation (provided, for greater certainty, that the cash pooling and zero-balancing account services provided with respect to the JPMorgan accounts held by the U.S. Bank Account Holders may continue in the ordinary course); (ii) exercise or claim any right of set-off against any account included in the Cash Management System, other than set-off permitted pursuant to paragraph 8 against applicable Authorized Cash Collateral solely in respect of any Cash Management Obligations; or (iii) subject to paragraph 6(d)(ii), modify the Cash Management System;
- (c) any of the Cash Management Banks may rely on the representations of the applicable Just Energy Entities with respect to whether any cheques or other payment order drawn or issued by the applicable Just Energy Entity prior to, on, or subsequent to the date of this Order should be honoured pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for: (i) relying on such representations by the applicable Just Energy Entities as provided for herein; or (ii) honouring any cheque (whether made before, on or after the date hereof) in a good faith belief that the Court has authorized such cheque or item to be honoured;
- (d) (i) those certain existing deposit agreements between the Just Energy Entities and the Cash Management Banks shall continue to govern the post-filing cash management relationship between the Just Energy Entities and the Cash Management Banks, and

- that all of the provisions of such agreements shall remain in full force and effect; (ii)(A) changes to the Cash Management System in accordance with the Lender Support Agreement shall be permitted; and (B) the Just Energy Entities, with the consent of the Monitor, the DIP Agent, the majority of the DIP Lenders and the Cash Management Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts, where such changes are not otherwise implemented pursuant to paragraph 6(d)(ii)(A); (iii) all control agreements in existence prior to the date of this Order shall apply; and (iv) the Cash Management Banks are authorized to debit the Just Energy Entities' accounts in the ordinary course of business in accordance with the Cash Management System arrangements without the need for further order of this Court for all undisputed Cash Management Obligations owing to the Cash Management Banks;
- (e) the Cash Management Banks shall be entitled to the benefit of and are hereby granted a charge (the “**Cash Management Charge**”) on the Property to secure the Cash Management Obligations due and owing and that have not been paid in accordance with the applicable Cash Management Arrangements (as defined in the Lender Support Agreement). The Cash Management Charge shall have the priority set out in paragraphs 53-55 herein; and
- (f) the Just Energy Entities are authorized but not directed to continue to operate under the merchant processing agreements with JPMorgan Chase Bank, N.A., Paymentech, LLC (“**Paymentech**”) (collectively and as amended, restated, supplemented, or otherwise modified from time to time, the “**Merchant Processing Agreement**”). The Just Energy Entities are authorized to pay or reimburse Paymentech for fees, charges, refunds, chargebacks, reserves and other amounts due and owing from the Just Energy Entities to Paymentech (the “**Merchant Services Obligations**”) whether such obligations are incurred prior to, on or after the date hereof, and Paymentech is authorized to receive or obtain payment for such Merchant Services Obligations, as provided under, and in the manner set forth in, the Merchant Processing Agreement, including, without limitation, by way of recoupment or set-off without further order of the Court.

7. **THIS COURT ORDERS** that, except as specifically permitted herein, the Just Energy Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Just Energy Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business; provided, however, that the Just Energy Entities, until further order of this Court, are hereby permitted, subject to the terms of the Definitive Documents: (i) with the consent of the Monitor, to provide cash collateral (“**Authorized Cash Collateral**”) to third parties (the “**Collateral Recipients**”), including to the Cash Management Banks in accordance with the Lender Support Agreement, with respect to obligations incurred before, on or after the date hereof, and to grant security interests in such Authorized Cash Collateral in favour of the Collateral Recipients, where so doing is necessary to operate the Business in the normal course during these proceedings; (ii) subject to the terms of the Lender Support Agreement, to reimburse the reasonable documented fees and disbursements of one Canadian legal counsel, one U.S. legal counsel, one local counsel in Texas and one financial advisor to the agent (the “**CA Agent**”) and the lenders (the “**CA Lenders**”) under the Credit Agreement, whether incurred before or after the date of this Order; (iii) subject to the terms of the Lender Support Agreement, to pay all non-default interest and fees to the CA Agent and the CA Lenders in accordance with its terms; and (iv) to repay advances under the Credit Agreement solely for the purpose of creating availability under the Revolving Facilities in order for the Just Energy Entities to request the issuance of Letters of Credit under the Revolving Facilities to continue to operate the Business in the ordinary course during these proceedings, subject to: (A) obtaining the consent of the Monitor with respect to the issuance of the Letters of Credit under the Revolving Facilities; and (B) receipt of written confirmation from the applicable CA Lender(s) under the Credit Agreement that such CA Lender(s) will issue a Letter of Credit of equal value within one (1) Business Day thereafter. Capitalized terms used but not otherwise defined in this paragraph shall have the meanings ascribed thereto in the Credit Agreement.

8. **THIS COURT ORDERS** that the holders of cash collateral provided by the Just Energy Entities prior to the date hereof or any Collateral Recipients of Authorized Cash Collateral (the foregoing, collectively, “**Cash Collateral**”) shall be authorized to exercise any available rights of

set-off in respect of such Cash Collateral with respect to obligations secured thereby, whether incurred before, on or after the date hereof.

9. **THIS COURT ORDERS** that the Charges (as defined below) shall rank junior in priority to any liens, security interests and charges attached to Cash Collateral in favour of the holders thereof, and shall attach to the Cash Collateral only to the extent of any rights of any Just Energy Entity to the return of such Cash Collateral.

10. **THIS COURT ORDERS** that, subject to the terms of the Definitive Documents (as hereinafter defined), the Just Energy Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages (including, without limitation, the Q3 bonus described in the Munnely Affidavit), salaries, commissions, employee benefits, contributions in respect of retirement or other benefit arrangements, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) all outstanding and future amounts owing to or in respect of other workers providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing arrangements;
- (c) the fees and disbursements of any Assistants retained or employed by the Just Energy Entities in respect of these proceedings at their standard rates and charges, which, in the case of the Financial Advisor (as defined below) shall be the amounts payable in accordance with the Financial Advisor Agreement (as defined below);
- (d) with the consent of the Monitor in consultation with the agent under the Credit Agreement (or its advisors), amounts owing for goods or services actually provided to any of the Just Energy Entities prior to the date of this Order by third parties, if, in the opinion of the Just Energy Entities, such third party is critical to the Business and ongoing operations of the Just Energy Entities;
- (e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 12 of this Order, and whereby the nonpayment of

which by any Just Energy Entity could result in a responsible person associated with a Just Energy Entity being held personally liable for such nonpayment; and

- (f) taxes related to revenue, State income or operations incurred or collected by a Just Energy Entity in the ordinary course of business.

11. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the Definitive Documents, the Just Energy Entities shall be entitled but not required to pay all reasonable expenses incurred by the Just Energy Entities in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Just Energy Entities following the date of this Order.

12. **THIS COURT ORDERS** that the Just Energy Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Just Energy Entities in connection with the sale of goods and services by the Just Energy Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Just Energy Entities.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Just Energy Entities shall, subject to such requirements as are imposed by the CCAA and subject to the terms of the Definitive Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their Business or operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, selling and reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganization,

all of the foregoing to permit the Just Energy Entities to proceed with an orderly restructuring of the Just Energy Entities and/or the Business (the “**Restructuring**”).

LEASES

14. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Just Energy Entities shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Just Energy Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On

the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

15. **THIS COURT ORDERS** that the Just Energy Entities shall provide each of the relevant landlords with notice of the relevant Just Energy Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the entitlement of a Just Energy Entity to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Just Energy Entity, or by further Order of this Court upon application by the Just Energy Entities on at least two (2) days notice to such landlord and any such secured creditors. If any Just Energy Entity disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

16. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (i) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Just Energy Entity and the Monitor 24 hours' prior written notice, and (ii) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the relevant Just Energy Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE JUST ENERGY ENTITIES, THE BUSINESS OR THE PROPERTY

17. **THIS COURT ORDERS** that until and including June 4, 2021 or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process before any court, tribunal, agency or other legal or, subject to paragraph 18, regulatory body (each, a "**Proceeding**") shall be commenced or continued against or in respect of any of the Just Energy Entities or the

Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Just Energy Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Just Energy Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, foreign regulatory body or agency or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Just Energy Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Just Energy Entities to carry on any business which the Just Energy Entities are not lawfully entitled to carry on, (ii) subject to paragraph 19, affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

19. **THIS COURT ORDERS** that notwithstanding Section 11.1 of the CCAA, all rights and remedies of provincial energy regulators and provincial regulators of consumer sales that have authority with respect to energy sales against or in respect of the Just Energy Entities or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended during the Stay Period except with the written consent of the Just Energy Entities and the Monitor, or leave of this Court on notice to the Service List.

NO INTERFERENCE WITH RIGHTS

20. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Just Energy Entities except with

the written consent of the Just Energy Entities and the Monitor, leave of this Court or as permitted under any Qualified Support Agreement or the Lender Support Agreement.

CONTINUATION OF SERVICES

21. **THIS COURT ORDERS** that during the Stay Period, except as permitted under any Qualified Support Agreement or the Lender Support Agreement, all Persons having oral or written agreements with any Just Energy Entity or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Just Energy Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Just Energy Entities, and that the Just Energy Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Just Energy Entities in accordance with normal payment practices of the Just Energy Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Just Energy Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. **THIS COURT ORDERS** that, subject to paragraph 30 but notwithstanding any other paragraphs of this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Just Energy Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

23. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Second Carter Affidavit and attached as Confidential Appendix “Q” thereto, is

hereby approved and the Just Energy Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed the aggregate amount of C\$2,012,100 for Canadian dollar payments and US\$ 3,876,024 for U.S. dollar payments, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 53-55 herein.

LENDER SUPPORT AGREEMENT

25. **THIS COURT ORDERS** that the Lender Support Agreement is hereby ratified and approved and that, upon the occurrence of a termination event under the Lender Support Agreement, the CA Lenders may exercise the rights and remedies available to them under the Lender Support Agreement in accordance with the terms thereof.

PRE-FILING SECURITY INTERESTS

26. **THIS COURT ORDERS** that any obligations secured by a valid, enforceable and perfected security interest upon or in respect of any of the Property pursuant to a security agreement which includes as collateral thereunder any Property acquired after the date of the applicable security agreement (“**After-Acquired Property**”), shall continue to be secured by the Property (including After Acquired Property that may be acquired by the applicable Just Energy Entities after the commencement of these proceedings) notwithstanding the commencement of these proceedings, subject to the priority set out in paragraphs 53-55 herein.

COMMODITY SUPPLIERS

27. **THIS COURT ORDERS** that each Qualified Commodity/ISO Supplier shall be entitled to the benefit of and is hereby granted a charge (together, the “**Priority Commodity/ISO Charge**”) on the Property in an amount equal to the value of the Priority Commodity/ISO Obligations. The value of the Priority Commodity/ISO Obligations shall be determined in accordance with the terms of the existing agreements or arrangements between the applicable Just Energy Entity and the Qualified Commodity/ISO Supplier or, in the event of any dispute, by the

Court. The Priority Commodity/ISO Charge shall have the priority set out in paragraphs 53-55 herein.

28. **THIS COURT ORDERS** that the Commodity/ISO Supplier Support Agreements are hereby ratified, approved and deemed to be Qualified Support Agreements.

29. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver up to eight (8) Qualified Support Agreements.

30. **THIS COURT ORDERS** that upon the occurrence of an event of default under a Qualified Support Agreement, the applicable Qualified Commodity/ISO Supplier may exercise the rights and remedies available to it under its Qualified Support Agreement, or upon five (5) days' notice to the Just Energy Entities, the Monitor and the Service List, may apply to this Court to seek the Court's authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to its Commodity Agreement or ISO Agreement and the Priority Commodity/ISO Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities provided that a Qualified Commodity/ISO Supplier may, unless otherwise ordered by the Court, terminate any Commodity Agreements and Qualified Support Agreements entered into after May 26, 2021 without obtaining the Court's authorization in the event that: (i) an Order is granted in these proceedings that authorizes the exercise of rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders' Charge (as defined below); or (ii) these proceedings or the recognition proceedings under Chapter 15 of the United States Bankruptcy Code are dismissed or converted to a liquidation proceeding, including a receivership, bankruptcy, proceeding under Chapter 7 of the United States Bankruptcy Code or otherwise.

31. **THIS COURT ORDERS** that the Monitor shall provide a report on the value of the Priority Commodity/ISO Obligations as of the last day of each calendar month by posting such report on the Monitor's Website (as defined below) within three (3) Business Days of such calendar month end.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

32. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Just Energy Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Just Energy Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Just Energy Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Just Energy Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

33. **THIS COURT ORDERS** that each of the Just Energy Entities shall jointly and severally indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Just Energy Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

34. **THIS COURT ORDERS** that the directors and officers of the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of C\$44,100,000, as security for the indemnity provided in paragraph 33 of this Order. The Directors' Charge shall have the priority set out in paragraphs 53-55 herein.

35. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the Just Energy Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 33.

APPOINTMENT OF MONITOR

36. **THIS COURT ORDERS** that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Just Energy Entities with the powers and obligations set out in the CCAA or set forth herein and that the Just Energy Entities and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Just Energy Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Just Energy Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Just Energy Entities, to the extent required by the Just Energy Entities, in their dissemination to the DIP Agent, the DIP Lenders and their counsel of financial and other information in accordance with the Definitive Documents;
- (d) advise the Just Energy Entities in their preparation of the Just Energy Entities' cash flow statements and reporting required by the DIP Agent and DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Agent and DIP Lenders and their counsel in accordance with the Definitive Documents;
- (e) advise the Just Energy Entities in their development of a Plan and any amendments to a Plan;
- (f) assist the Just Energy Entities, to the extent required by the Just Energy Entities, with the holding and administering of creditors' or shareholders' meeting for voting on the Plan;

- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Just Energy Entities, wherever located and to the extent that is necessary to adequately assess the Just Energy Entities' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

38. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Just Energy Entities and the DIP Agent and the DIP Lenders with information provided by the Just Energy Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Just Energy Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

41. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor (including both U.S. and Canadian counsel for all purposes of this Order), and counsel to the Just Energy Entities (including both U.S. and Canadian counsel for all purposes of this Order) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the Just Energy Entities as part of the costs of these proceedings. The Just Energy Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the Just Energy Entities' counsel on a weekly basis.

43. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

44. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Just Energy Entities shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$3,000,000 as security for their professional fees and disbursements incurred at their standard

rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53-55 herein.

DIP FINANCING

45. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to obtain and borrow or guarantee, as applicable, pursuant a credit facility from the DIP Agent and the DIP Lenders in order to finance the Just Energy Entities' working capital requirements and other general corporate purposes, all in accordance with the Cash Flow Statements (as defined in the DIP Term Sheet) and Definitive Documents, provided that borrowings under such credit facility shall not exceed US\$125,000,000 unless permitted by further Order of this Court.

46. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the CCAA Interim Debtor-in-Possession Financing Term Sheet between the Just Energy Entities, the DIP Agent and the DIP Lenders dated as of March 9, 2021 and attached as Appendix "DD" to the First Carter Affidavit (as may be amended or amended and restated from time to time, the "**DIP Term Sheet**").

47. **THIS COURT ORDERS** that the Just Energy Entities are hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet and the Cash Flow Statements, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Agent and the DIP Lenders pursuant to the terms thereof, and the Just Energy Entities are hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the DIP Agent and the DIP Lenders under and pursuant to the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order. Notwithstanding any other provision in this Order, all payments and other expenditures to be made by any of the Just Energy Entities to any Person (except the Monitor and its counsel) shall be in accordance with the terms of the Definitive Documents, including in respect of payments in satisfaction of Priority Commodity/ISO Obligations.

48. **THIS COURT ORDERS** that the DIP Agent and the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Lenders’ Charge**”) on the Property, which DIP Lenders’ Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders’ Charge shall have the priority set out in paragraphs 53-55 hereof.

49. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Agent on behalf of the DIP Lenders may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders’ Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the DIP Lenders’ Charge, the DIP Agent or the DIP Lenders, as applicable, may immediately cease making advances or providing any credit to the Just Energy Entities and shall be permitted to set off and/or consolidate any amounts owing by the DIP Agent or the DIP Lenders to the Just Energy Entities against the obligations of the Just Energy Entities to the DIP Agent and the DIP Lenders under the Definitive Documents or the DIP Lenders’ Charge, make demand, accelerate payment and give other notices with respect to the obligations of the Just Energy Entities to the DIP Agent or the DIP Lenders under the Definitive Documents or the DIP Lenders’ Charge, or to apply to this Court on five (5) days’ notice to the Just Energy Entities, the Monitor and the Service List to seek the Court’s authorization to exercise any and all of its other rights and remedies against the Just Energy Entities or the Property under or pursuant to the Definitive Documents and the DIP Lenders’ Charge, including without limitation, for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Just Energy Entities and for the appointment of a trustee in bankruptcy of the Just Energy Entities; and
- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Just Energy Entities or the Property.

50. **THIS COURT ORDERS AND DECLARES** that the DIP Agent, the DIP Lenders, the Qualified Commodity/ISO Suppliers and the Cash Management Banks shall be treated as

unaffected in any Plan filed by the Applicants or any of them under the CCAA, or any proposal filed by the Applicants or any of them under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents, the Priority Commodity/ISO Obligations or the Cash Management Obligations, as applicable.

APPROVAL OF FINANCIAL ADVISOR AGREEMENT

51. **THIS COURT ORDERS** that the agreement dated February 20, 2021 engaging BMO Nesbitt Burns Inc. (the “**Financial Advisor**”) as financial advisor to the Just Energy Entities and attached as Confidential Appendix “FF” to the First Carter Affidavit (the “**Financial Advisor Agreement**”), and the retention of the Financial Advisor under the terms thereof, is hereby ratified and approved and the Just Energy Entities are authorized and directed *nunc pro tunc* to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

52. **THIS COURT ORDERS** that the Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the “**FA Charge**”) on the Property, which charge shall not exceed an aggregate amount of C\$8,600,000 as security for the fees and disbursements and other amounts payable under the Financial Advisor Agreement, both before and after the making of this Order in respect of these proceedings. The FA Charge shall have the priority set out in paragraphs 53-55 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

53. **THIS COURT ORDERS** that the priorities of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, as among them, shall be as follows:

First – Administration Charge and FA Charge (to the maximum amount of C\$3,000,000 and C\$8,600,000, respectively), on a *pari passu* basis;

Second – Directors’ Charge (to the maximum amount of C\$44,100,000);

Third – KERP Charge (to the maximum amounts of C\$2,012,100 and US\$3,876,024);

Fourth – DIP Lenders’ Charge (to the maximum amount of the Obligations (as defined in the DIP Term Sheet) owing thereunder at the relevant time) and the Priority Commodity/ISO Charge, on a *pari passu* basis; and

Fifth – Cash Management Charge.

54. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the DIP Lenders’ Charge, the Priority Commodity/ISO Charge or the Cash Management Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. **THIS COURT ORDERS** that, subject to paragraph 9, each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person (including those commodity suppliers listed in Schedule “A” hereto).

56. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the Just Energy Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Just Energy Entities also obtain the prior written consent of the Monitor, the DIP Agent on behalf of the DIP Lenders and the beneficiaries of the Administration Charge, the FA Charge, the Directors’ Charge, the KERP Charge, the Priority Commodity/ISO Charge and the Cash Management Charge, or further Order of this Court.

57. **THIS COURT ORDERS** that the Charges, the agreements and other documents governing or otherwise relating to the obligations secured by the Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Agent or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made

pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Just Energy Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any Just Energy Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Just Energy Entities entering into the DIP Term Sheet, the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and
- (c) the payments made by the Just Energy Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Just Energy Entities’ interest in such real property leases.

SERVICE AND NOTICE

59. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and the Wall Street Journal a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Just Energy Entities, a notice to every known creditor who has a claim against the Just Energy Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the

prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

60. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

61. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL - <http://cfcanada.fticonsulting.com/justenergy> (the “**Monitor’s Website**”).

62. **THIS COURT ORDERS** that the Just Energy Entities, the DIP Agent or the DIP Lenders and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal deliver, facsimile or other electronic transmission to the Just Energy Entities’ creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

FOREIGN PROCEEDINGS

63. **THIS COURT ORDERS** that the Applicant, Just Energy Group Inc. (“**JEGI**”) is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

64. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

GENERAL

65. **THIS COURT ORDERS** that any interested party may apply to this Court to amend or vary this Order on not less than seven (7) days’ notice to any other party or parties likely to be affected by the Order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees, the DIP Agent and the DIP Lenders shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 53-55 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents or pursuant to the Qualified Support Agreement, as applicable, until the date this Order may be amended, varied or stayed. For the avoidance of doubt (i) no payment in respect of any obligations secured by the Priority Commodity/ISO Charge or the Cash Management Charge or made to the CA Lenders pursuant to the Lender Support Agreement, and (ii) none of the Authorized Cash Collateral, shall be subject to the terms of any intercreditor agreement, including any “turnover” or “waterfall” provision(s) therein.

66. **THIS COURT ORDERS** that, notwithstanding paragraph 65 of this Order, the Just Energy Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

67. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Just Energy Entities, the Business or the Property.

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

69. **THIS COURT ORDERS** that each of the Just Energy Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that JEGI is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

70. **THIS COURT ORDERS** that Confidential Appendices “FF” and “GG” to the First Carter Affidavit and Confidential Appendix “Q” to the Second Carter Affidavit shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

71. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



SCHEDULE “A”**JE Partnerships****Partnerships:**

- JUST ENERGY ONTARIO L.P.
- JUST ENERGY MANITOBA L.P.
- JUST ENERGY (B.C.) LIMITED PARTNERSHIP
- JUST ENERGY QUÉBEC L.P.
- JUST ENERGY TRADING L.P.
- JUST ENERGY ALBERTA L.P.
- JUST GREEN L.P.
- JUST ENERGY PRAIRIES L.P.
- JEBPO SERVICES LLP
- JUST ENERGY TEXAS LP

Commodity Suppliers:

- EXELON GENERATION COMPANY, LLC
- BRUCE POWER L.P.
- SOCIÉTÉ GÉNÉRALE
- EDF TRADING NORTH AMERICA, LLC
- NEXTERA ENERGY POWER MARKETING, LLC
- MACQUARIE BANK LIMITED
- MACQUARIE ENERGY CANADA LTD.
- MACQUARIE ENERGY LLC
- MORGAN STANLEY CAPITAL GROUP

- BP CANADA ENERGY MARKETING CORP.
- BP ENERGY COMPANY
- BP CORPORATION NORTH AMERICA INC.
- BP CANADA ENERGY GROUP ULC
- SHELL ENERGY NORTH AMERICA (CANADA) INC.
- SHELL ENERGY NORTH AMERICA (US), L.P.

SCHEDULE “B”

DEFINITIONS

“**Commodity Agreement**” means a gas supply agreement, electricity supply agreement or other agreement with any Just Energy Entity for the physical or financial purchase, sale, trading or hedging of natural gas, electricity or environmental derivative products, or contracts entered into for protection against fluctuations in foreign currency exchange rates, which shall include any master power purchase and sale agreement, base contract for sale and purchase, ISDA master agreement or similar agreement.

“**ISO Agreement**” means an agreement pursuant to which a Just Energy Entity has reimbursement obligations to a counterparty for payments made by such counterparty on behalf of such Just Energy Entity to an independent system operator that coordinates, controls and monitors the operation of an electrical power system, and includes all agreements related thereto.

“**Lender Support Agreement**” means that certain Accommodation and Support Agreement dated as of March 18, 2021 and attached as Exhibit “A” to the Third Carter Affidavit, among the CA Agent, the CA Lenders and the Just Energy Entities, which agreement shall not be amended, restated or modified in any manner without the consent of the majority of the DIP Lenders and the Monitor.

“**Priority Commodity/ISO Obligation**” means amounts that are due and payable, at the applicable time, for: (i)(A) the physical supply of electricity or gas that has been delivered on or after March 9, 2021; (B) financial settlements on or after March 9, 2021; and (C) amounts owing under a confirmation or transaction that was executed on or after March 9, 2021 pursuant to a Commodity Agreement as a result of the termination thereof in accordance with the applicable Qualified Support Agreement; and (ii) for services actually delivered by a Qualified Commodity/ISO Supplier on or after March 9, 2021 pursuant to an ISO Agreement (but for greater certainty, excluding any amount owing for ISO services provided under an ISO Agreement on or before the date of this Order, whether or not yet due).

“**Qualified Commodity/ISO Supplier**” means any counterparty to a Commodity Agreement or ISO Agreement that has executed or executes a Qualified Support Agreement with a Just Energy Entity and refrained from exercising any available termination rights, under the Commodity

Agreement as a result of the commencement of the Proceedings absent an event of default under such Qualified Support Agreement.

“Qualified Support Agreement” means a support agreement between a Just Energy Entity and a counterparty to a Commodity Agreement, in form and substance satisfactory to the Just Energy Entities and the DIP Lenders, acting reasonably, which includes, among other things: (i) that such counterparty shall apply to the Court on five (5) days’ notice to the Just Energy Entities, the Monitor and the Service List prior to exercising any termination rights under a Qualified Support Agreement, except as expressly provided for herein; (ii) the obligation to supply physical and financial power and natural gas and other related services pursuant to any confirmations or transactions executed pursuant to a Commodity Agreement; and (iii) an agreement to refrain from exercising termination rights as a result of the commencement of these proceedings absent an event of default under such support agreement.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC., et al
(collectively, the "Applicants")

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND AMENDED & RESTATED INITIAL
ORDER**

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Lawyers for the Applicants

APPENDIX “B”

Cash Flow Forecast for the period ending March 12, 2022

APPENDIX "B"

Cash Flow Forecast for the period ending March 12, 2022

Weeks Ending (Saturday) (CAD\$ in millions)		2/5/22 Forecast	2/12/22 Forecast	2/19/22 Forecast	2/26/22 Forecast	3/5/22 Forecast	3/12/22 Forecast	Through 3/12/22
Forecast Week		Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Total
RECEIPTS								
Sales Receipts	[1]	\$59.9	\$64.8	\$66.8	\$63.6	\$49.1	\$44.9	\$349.1
Miscellaneous Receipts	[2]	-	-	-	-	-	-	-
Total Receipts		\$59.9	\$64.8	\$66.8	\$63.6	\$49.1	\$44.9	\$349.1
DISBURSEMENTS								
<i>Operating Disbursements</i>								
Energy and Delivery Costs	[3]	(\$76.0)	\$49.0	(\$127.2)	(\$19.4)	(\$70.9)	(\$12.9)	(\$257.3)
Payroll	[4]	(0.0)	(3.6)	-	(4.1)	(4.6)	(3.3)	(15.7)
Taxes	[5]	(4.8)	(0.1)	-	(6.3)	-	(0.0)	(11.2)
Commissions	[6]	(1.4)	(1.1)	(2.7)	(4.3)	(1.4)	(1.0)	(12.0)
Selling and Other Costs	[7]	(3.9)	(3.2)	(3.2)	(3.2)	(2.8)	(2.8)	(19.1)
Total Operating Disbursements		(\$86.0)	\$40.9	(\$133.1)	(\$37.3)	(\$79.8)	(\$20.0)	(\$315.3)
OPERATING CASH FLOWS		(\$26.1)	\$105.7	(\$66.4)	\$26.3	(\$30.6)	\$24.9	\$33.8
<i>Financing Disbursements</i>								
Credit Facility - Borrowings / (Repayments)	[8]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest Expense & Fees	[9]	(1.0)	-	-	-	(0.9)	-	(1.9)
<i>Restructuring Disbursements</i>								
Professional Fees	[10]	(0.2)	(1.0)	(0.5)	(3.6)	(1.9)	(1.2)	(8.4)
NET CASH FLOWS		(\$27.3)	\$104.7	(\$66.9)	\$22.8	(\$33.4)	\$23.7	\$23.5
CASH								
Beginning Balance		\$131.9	\$104.6	\$209.3	\$142.4	\$165.1	\$131.7	\$131.9
Net Cash Inflows / (Outflows)		(27.3)	104.7	(66.9)	22.8	(33.4)	23.7	23.5
Other (FX)		-	-	-	-	-	-	-
ENDING CASH		\$104.6	\$209.3	\$142.4	\$165.1	\$131.7	\$155.4	\$155.4
BORROWING SUMMARY								
DIP Facility Credit Limit		\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	\$157.5	
DIP Draws		-	-	-	-	-	-	
DIP Principal Outstanding		157.5	157.5	157.5	157.5	157.5	157.5	
DIP Availability		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.

2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.

3. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.

4. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of payroll taxes and any payments associated with the Company's bonus programs.

5. Taxes reflect the remittance of applicable state and local taxes.

6. Commissions include fees paid to customer acquisition contractors and suppliers.

7. Selling and Other Costs include selling, general, and administrative payments.

8. The Credit Facility Borrowings / (Repayments) show borrowings and repayments under the Company's credit facilities.

9. Interest expenses & fees include interest and fees on the Company's credit and LC facilities.

10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, the DIP lenders' professionals, and fees for Lender Support and Certain Commodity Support Agreements.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceedings commenced at Toronto

FIFTH REPORT OF THE MONITOR

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FTI Consulting Canada Inc.

*THIS IS EXHIBIT "S" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border. The signature is written in a cursive style with a small star-like mark at the end.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicants

AFFIDAVIT OF MICHAEL CARTER

I, Michael Carter, of the Town of Flower Mound, in the State of Texas, MAKE OATH AND SAY:

1. I have been Just Energy Group Inc.'s ("**JEGI**") Chief Financial Officer since September 2020. In that role, I am responsible for all financial-related aspects of the business of JEGI and its subsidiaries in the CCAA proceedings (collectively, the "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order (as defined below) to which the protections and authorizations of the Initial Order were extended (collectively with the Applicants, the "**Just Energy Entities**"). As such, I have personal knowledge of the

matters deposed to in this affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this affidavit, I have also consulted with the Just Energy Group's senior management team and their financial and legal advisors, and in particular U.S. counsel who has carriage of the Putative Class Actions (as defined below) on behalf of the Just Energy Group.

2. I make this affidavit in support of the Applicants' motion for a short extension of the Stay Period (as defined below) to, and including, March 4, 2022, and in response to the Motion for Advice and Directions brought by Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP (collectively, "**Plaintiffs' Counsel**"), in their capacity as counsel to the proposed representative plaintiffs in *Donin v. Just Energy Group Inc. et al.*¹ (the "**Donin Action**") and *Trevor Jordet v. Just Energy Solutions Inc.*² (the "**Jordet Action**", together with the Donin Action the "**Putative Class Actions**"), seeking (among other things):

- (a) an order declaring that the plaintiff classes in the Putative Class Actions are to be unaffected by this CCAA Proceeding;
- (b) in the alternative to the relief sought in paragraph 2(a), above, an order implementing a schedule and process (the "**Claims Adjudication Process**") for the final adjudication of the claims arising from the Putative Class Actions (the "**Putative Class Claims**") prior to any consideration by the Court of the

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

² No. 18 Civ. 953 (WMS) (W.D.N.Y.).

Applicants' proposed plan of compromise or arrangement (the "**Plan**") or other event to exit this CCAA Proceeding;

- (c) an order directing the Applicants to provide the plaintiffs with access to any data room established by the Applicants in respect of these proceedings, and appointing a mediator/arbitrator (the "**Mediator/Arbitrator**") to resolve all matters pertaining to the production of documents and access to information for restructuring purposes (as distinct from production for the purpose of the Claims Adjudication Process);
- (d) in the alternative to the relief sought in paragraph 2(c), above, an order:
 - (i) directing the specific production of the following documents and information within seven (7) days of the date of the order:
 - (A) a listing of creditors, the amount claimed by each creditor, whether security or other priority is claimed, and the status of the claim (i.e., allowed/contested/subject to ongoing review/etc.) and the aggregate number of creditors and claims;
 - (B) the DIP Term Sheet, each of its revisions, the latest current form, a conformed copy of the DIP term sheet with all revisions, any future updates, signature pages, DIP loan amount exhibits by DIP Loan participant, and definitive documents, and any other related non-privileged documents;
 - (C) copies of all of the Applicants' insurance policies that might respond to the Putative Class Claims, the coverage status, the total amount drawn against the policy to date, and a list of competing claims made against the policies;
 - (D) a list and the expected timing of key events in the CCAA Proceeding, including the release of the Applicants' proposed exit plan and how such exit plan is to be put before the Court and Creditors for approval;
 - (E) the restructuring, realization and/or sale or investment process related to any and all exit plans under consideration by the Applicants;

- (F) any debt capacity analyses by the company and/or its investment bank;
 - (G) an updated business plan showing updates of actual results to projected results, an update showing the range of recoveries as per Texas House Bill 4492, the proceeds from the sale of ecobee Shares, and all other updates included in the business plan since it was published in May 2021; and
 - (H) a statement of the enterprise value of the company with supporting documents showing methodology, multiples, discount rates used, and comparables relied upon;
- (ii) directing the Applicants and their necessary advisors to meet with Plaintiffs' Counsel and their advisors within seven (7) days of the completion of production of the foregoing information, to review the information and answer questions; and
 - (iii) scheduling a further case conference within 21 days of the date of the order to report on the status of its implementation and to schedule such further case conferences or hearings as may be necessary for the effective management and supervision of these proceedings;

3. The Applicants are seeking to have the plaintiff's motion dismissed in its entirety. Among other things:

- (a) The Applicants have already provided Plaintiffs' Counsel with confidential information pursuant to an NDA (defined below) in addition to the information available in JEGI's public company filings and the extensive documentation filed in the CCAA Proceedings. The Applicants and the Monitor have also answered questions posed by Plaintiffs' Counsel and attended numerous calls with them. The Applicants have diligently responded to reasonable information requests.
- (b) The Applicants are addressing the plaintiffs' claims pursuant to the Claims Procedure Order and are prepared to engage with Plaintiffs' Counsel and the Monitor to appoint a Claims Officer to efficiently determine the claims. To that

end, the Applicants have proposed a fair and reasonable schedule for the adjudication of the claims, subject to the discretion of the Claims Officer; and

- (c) The Applicants are currently negotiating a restructuring solution with their funded debt holders to preserve the Just Energy Entities' business as a going concern. Once that process is complete, the Applicants will seek court approval of any restructuring solution. All stakeholders will have an opportunity to make submissions to the Court with respect to the proposed restructuring at the appropriate time.

4. The Applicants and their advisors are spending an inordinate amount of time dealing with two contingent, uncertified, unsecured creditors whose claims have been disallowed in full. The Applicants require breathing space to focus on their restructuring discussions with the stakeholders that have funded the Just Energy Entities and should not be required to expend additional resources responding to extensive information requests at this time.

5. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

A. HISTORY OF THE CCAA PROCEEDINGS

6. On March 9, 2021 (the "**Filing Date**"), the Applicants obtained protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**"). The Applicants' filing for protection under the CCAA was precipitated by the

acute and unforeseen liquidity challenge caused by the unprecedented winter storm in Texas and the Texas regulators' response to same.

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

8. On April 2, 2021, the United States Bankruptcy Court for the Southern District of Texas granted a Final Recognition Order (the “**Final Recognition Order**”) which, among other things, granted the ARIO, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the CCAA Court, with full force and effect on a final basis with respect to the Just Energy Entities' property located within the United States.³

9. On September 15, 2021, the CCAA Court granted the Claims Procedure Order establishing a process (the “**Claims Process**”) to determine the nature, quantum, and validity of Claims against the Just Energy Entities and their respective Directors and Officers. The Claims Procedure Order established a Claims Bar Date of November 1, 2021. A copy of the Claims Procedure Order is attached hereto as **Exhibit “A”**. Since the Claims Bar Date, the Just Energy Entities have been working diligently with the Monitor to review, record, dispute and, where appropriate, finally determine the amount and characterization of Claims against the Just Energy Entities and their respective Directors and Officers.

10. On November 10, 2021, the CCAA Court granted an Order which, among other things, approved an amendment to the CCAA Interim Debtor-in-Possession Financing Term Sheet, dated

³ The Final Recognition Order also provided that, “All parties who believe they have a claim against any of the Debtors are obligated to file such claims in, and only in, the Canadian Proceeding.”

as of March 9, 2021 (the “**DIP Term Sheet**”) to, among other things, extend the maturity date thereunder from December 31, 2021 to September 30, 2022, and extend the Stay Period (as defined in the Second ARIIO) to February 17, 2022.

B. EXTENSION TO THE STAY PERIOD

11. Since the Stay Period was last extended on November 10, 2021, the Just Energy Entities, with the assistance of their legal and financial advisors, and in close consultation with the Monitor, have been working in earnest to advance their restructuring. Throughout the past number of months, the Just Energy Entities have continued their extensive engagement with their most significant stakeholders who are financially participating in the restructuring, including the lenders under the DIP Term Sheet (the “**DIP Lenders**”) (who are also lenders under the non-revolving term loan established pursuant to the Term Loan Agreement as part of the 2020 balance sheet recapitalization transaction, the assignees of a significant secured supplier claim from BP, and the Plan sponsor under the company’s Plan), the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy (U.S.) Corp., dated as of September 28, 2020 (the “**Credit Facility Lenders**”), and Shell⁴ (a significant secured supplier), regarding a framework for the recapitalization of the Just Energy Entities and their respective businesses.

12. The Plan is intended to preserve the going concern value of the Just Energy Entities’ businesses for the benefit of stakeholders (including the company’s approximately 950,000 customers and significant trading partners), maintain the employment of the Just Energy Entities’

⁴ Collectively, Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC.

more than 1000 employees, and support the long-term viability of the business upon emergence from these CCAA and Chapter 15 proceedings.

13. The discussions regarding the Plan include renegotiation of the complex intercreditor arrangement which governs the secured debt portion of the Just Energy Entities' capital structure, defining the relative priorities of the various parties' security interests and specifying the priority of such interests in accordance with the waterfall defined therein.⁵ The company has enjoyed the financial support of its most significant stakeholders to date, including multiple extensions of milestones by the DIP Lender to facilitate the Applicants' going-concern restructuring.

14. Given the nature of the business, the length of time the Applicants have been in the CCAA proceedings, the complexities and time consuming nature of the multiparty negotiations, and the volatility of the energy market, any significant delays in the conclusion of the restructuring could have damaging effects on the outcome for stakeholders and the support of the financial participants for the proposed restructuring. It is therefore imperative that the parties are able to conclude negotiations for the Plan and emerge from these CCAA proceedings as soon as possible. The parties' discussions are in advanced stages and are expected to conclude in the coming weeks.

15. In addition to operating a complicated business and negotiating a series of complex restructuring documents, management of the Just Energy Entities has been preparing since late last week for harsh winter weather that is forecast to significantly impact Texas later this week, which has required many hours of meetings and calls to review the Applicants' commodity supply

⁵ A copy of the intercreditor agreement can be found at Exhibit "P" to my affidavit sworn March 9, 2021 which can be accessed at the following link: <http://cfcanada.fticonsulting.com/justenergy/docs/Re%20Just%20Energy%20Inc%20et%20al%20-%20Application%20Record.pdf>

positions, hedging strategies and liquidity positions. While the Applicants believe they are prepared to manage through this event, it is prudent that management's time and resources continue be focused on the business' operations. Similar adverse weather events are always a risk and may continue to require significant management attention.

16. The Just Energy Entities are seeking a short, two-week extension to the Stay Period from February 17, 2022 to and including March 4, 2022 to permit them to (i) conclude their discussions with key stakeholders that have financially supported this company during these CCAA proceedings regarding the terms of a proposed Plan, (ii) finalize the Plan, and (iii) file a further motion with this Honourable Court for, among other things, an Order accepting the Plan for filing and authorizing the Just Energy Entities to call, hold and conduct virtual meetings of creditors to consider and vote on resolutions to approve the Plan. The Just Energy Entities currently have March 3, 2022 scheduled for the hearing of such motion.

17. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings. Since the Stay Period was last extended on November 10, 2021, the Just Energy Entities have, among other things:

- (a) continued their extensive and ongoing engagement with the DIP Lenders, the Credit Facility Lenders and Shell regarding the terms of the Plan;
- (b) continued reviewing and, in consultation with the Monitor, determining claims received within the Claims Process in accordance with the Claims Procedure Order including, but not limited to, (i) preparing and issuing Notices of Revision or Disallowance and notices of claim acceptance, where appropriate, (ii) engaging with certain claimants to discuss resolution and settlement of ongoing disputes

regarding their claims; and (iii) attending discussions with, and responding to inquiries from, multiple stakeholders and/or the Monitor regarding the Claims Process and Proofs of Claim/D&O Proofs of Claim received within the Claims Process;

- (c) commenced litigation against the Electric Reliability Council of Texas (“**ERCOT**”) and the Public Utility Commission of Texas (the “**PUCT**”) in the US Court on November 12, 2021, seeking to recover payments that were made by various of the Just Energy Entities to ERCOT for certain invoices in February 2021 relating to the unprecedented winter storm in Texas in February 2021. A copy of Just Energy’s Press Release announcing commencement of the litigation is attached hereto as **Exhibit “B”**;
- (d) received and undertook a review of ERCOT’s calculations of recoveries of certain costs to be securitized under House Bill 4492 which ERCOT filed with the PUCT on December 9, 2021 and according to which the Just Energy Entities expect to recover funds of approximately US\$147.5 million. A copy of Just Energy’s Press Release announcing release of ERCOT’s calculations is attached hereto as **Exhibit “C”**;
- (e) completed the windup and dissolution of Just Energy Finance Holding Inc. (“**JE Finance**”), and amended the style of cause in these CCAA proceedings to remove JE Finance as an Applicant, all in accordance with the Order of the CCAA Court, granted November 10, 2021. A copy of the Certificate of Dissolution is attached hereto as **Exhibit “D”**.

- (f) continued to maintain regular communications with various regulators across Canada and the United States and satisfy all obligations to regulators that license one or more of the Just Energy Entities in the ordinary course. All licenses and registrations that the Just Energy Entities held as of the Filing Date remain valid and in full force and effect;
- (g) continued to provide all required reporting to the DIP Lenders, Credit Facility Lenders and the Qualified Commodity/ISO Suppliers in accordance with the ARIO, the DIP Term Sheet, and all Qualified Support Agreements, as applicable, and negotiated changes to certain milestone dates under the DIP Term Sheet, as necessary, to facilitate restructuring discussions; and
- (h) operated the business in the normal course with a view to maximizing the value of the Just Energy Entities for the benefit of all stakeholders.

18. I understand that the Monitor will file a report (the “**Monitor’s Fifth Report**”) that will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Just Energy Entities will have sufficient funds to continue their operations and fund these CCAA proceedings until March 4, 2022. I further understand that the Monitor’s Fifth Report will recommend that the Stay Period be extended.

C. BACKGROUND TO THE PUTATIVE CLASS ACTIONS

19. The information in this section is based on my review of court documents, the involvement of the senior management team in the litigation, and information received from Jason Cyrulnik of Cyrulnik Fattaruso LLP, US counsel for the defendants in the Putative Class Actions.

(a) **Jordet Action**

20. On April 6, 2018, Trevor Jordet filed the Jordet Action solely against Just Energy Solutions, Inc. (“**Just Energy Solutions**”) on behalf of a putative class of all “Just Energy customers charged a variable rate for residential natural gas services by Just Energy from April 2012 to the present”. The plaintiff alleged, among other things, that the defendant violated Pennsylvania Unfair Trade Practices and Consumer Protection Law (“**PUTPCP**”), breached contractual provisions and an implied covenant of good faith requiring Just Energy Solutions to consider “business and market conditions” when it charged rates that were more than the local utility rate for natural gas, and was unjustly enriched as a result of the alleged misconduct.

21. Importantly, the Jordet Action does not purport to deal with any electricity customers of Just Energy Solutions. A copy of the plaintiff’s complaint in the Jordet Action is attached as Exhibit “D” to the affidavit of Robert Tannor sworn January 17, 2022 (the “**Tannor Affidavit**”) filed in support of the plaintiffs’ Motion for Advice and Directions.

22. The Tannor Affidavit at paragraphs 7 and 38 mischaracterizes the result of the motion to dismiss that was brought by the defendant. In fact, the defendant achieved significant success on this motion that restricted the causes of action that may be alleged in the proposed class action. The US District Court in the Western District of New York (the “**WDNY Court**”) dismissed the PUTPCP and unjust enrichment claims, such that only the alleged breach of contract claim remains.⁶ Moreover, the WDNY Court held that claims for breach of contract prior to April 6,

⁶ As the WDNY Court noted in its decision on the motion to dismiss, a breach of the implied covenant of good faith is not a distinct cause of action from breach of contract under Pennsylvania law. *Jordet v. Just Energy Solutions Inc.*, Decision and Order 18-CV-953S regarding Motion to Dismiss dated December 7, 2020 (“**Jordet Motion to Dismiss Decision**”), Dkt. 43, at 4.

2014, are time-barred. A copy of the WDNY Court’s decision on the motion to dismiss dated December 7, 2020 is attached as Exhibit “E” to the Tannor Affidavit.

23. The WDNY Court’s decision was based solely on the pleadings being taken as true. Indeed, the WDNY Court noted in its decision that it “cannot dismiss a Complaint unless it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’”⁷ The lone remaining claim therefore turns on whether Just Energy Solutions breached contractual commitments to use its discretion to set rates consistent with “business and market conditions” (defined to include a host of factors), and the WDNY Court found that whether Just Energy Solutions’ pricing adhered to that discretionary standard could not readily be resolved solely on the pleadings.⁸ In other words, there was no determination by the Court on the merits of the remaining breach of contract claims asserted by the plaintiff.

24. As a result, the WDNY Court’s decision materially narrows the scope of the Jordet Action.

(b) Donin Action

25. On October 3, 2017, Fira Donin and Inna Golovan filed the Donin Action against JEGI, Just Energy New York Corp. (“**Just Energy NY**”), and John Does 1-100, which the plaintiffs alleged were “shell companies and affiliates” through which JEGI did business in New York and elsewhere, as well as “Just Energy management and employees who perpetrated the unlawful acts.” The action was brought on behalf of a putative class of “all Just Energy customers in the

⁷ Jordet Motion to Dismiss Decision, at 6.

⁸ Jordet Motion to Dismiss Decision, at 17-18.

United States [...] who were charged a variable rate for their energy at any time from [applicable statute of limitations period] to the date of judgment”.

26. The plaintiffs alleged, among other things, that the defendants engaged in fraudulent conduct, violated New York statutes by engaging in deceptive acts and practices, breached contractual provisions to consider “business and market conditions”, and breached the implied covenant of good faith when it charged rates that were more than the local utility rate for natural gas and electricity in New York. A copy of the plaintiffs’ complaint in the Donin Action is attached as Exhibit “B” to the Tannor Affidavit.

27. Again, the defendants were largely successful on the motion to dismiss, which significantly narrowed the scope of claims in the Donin Action. The US District Court in the Eastern District of New York (the “**EDNY Court**”) dismissed all the plaintiffs’ claims except for the breach of contract and implied covenant of good faith claims. A copy of the EDNY Court’s decision on the motion to dismiss dated September 24, 2021 is attached as Exhibit “C” to the Tannor Affidavit.

28. As noted by the EDNY Court, the plaintiff in a motion to dismiss must only “state a claim of relief that is plausible on its face”, accepting for the purposes of the motion that the factual allegations contained in the complaint are true.⁹ The EDNY Court did not make a judicial determination that Just Energy NY had improperly exercised its contractually agreed discretion to set rates, or even that Just Energy NY did not consider the many different business and market conditions in setting its rates. These were all matters which could not be resolved solely on the pleadings.

⁹ *Donin et al v. Just Energy Group Inc. et al*, Decision and Order 17-CV-5787(WFK)(SJB) regarding Motion to Dismiss dated September 24, 2021, Dkt. 111, at 4.

29. The EDNY Court also found that it did not have jurisdiction over John Does 1-100. All claims against these defendants were dismissed. This decision effectively limits the Donin class, should it be certified, to New York customers, as JEGI is a holding company that does not contract with any customers and Just Energy NY only contracts with customers based in New York.

30. On January 10, 2020, over Plaintiffs' Counsel's objection, the EDNY Court ordered that factual discovery in this matter was closed and that all pending discovery requests and disputes before that Court were terminated. This ruling came after years of discovery, including the production of documents by the defendants in response to numerous requests by the plaintiffs. All discovery to date has been limited to the defendants' New York business, consistent with the limited scope of the remaining claim.

(c) Proofs of Claim

31. On November 1, 2021, Plaintiffs' Counsel filed two Proofs of Claim in respect of the Donin and Jordet Actions, each in the unsecured amount of approximately USD\$3.66 billion.¹⁰ Copies of the Donin Proof of Claim, the Jordet Proof of Claim and the Claim Documentation included in both Proofs of Claim (excluding Exhibits 2-5, which are copies of the pleadings and motions to dismiss for both Putative Class Actions) are attached to the Tannor Affidavit as Exhibits "F", "G" and "H", respectively.

¹⁰ The damages calculation purports to be a joint, composite damages claim encompassing both lawsuits, notwithstanding the fundamental differences in terms of the defendants, scope of the claim and potential class members in the two actions.

(d) Notices of Disallowance

32. On January 11, 2022, the Monitor sent the proposed representative plaintiffs in the Putative Class Actions Notices of Disallowance in accordance with the Claims Procedure Order (the “**Notices of Disallowance**”). Copies of the Donin Notice of Disallowance and the Jordet Notice of Disallowance are appended to the Tannor Affidavit as Exhibits “Q” and “R”, respectively.

33. The Notices of Disallowance disallowed the claims advanced in both Proofs of Claim in full as, among other things, contingent, uncertified, speculative, and remote.

34. The Notices of Disallowance specifically address the plaintiffs’ attempts to expand the scope of their claims to add new defendants, new customer groups, and extended class periods. The Proofs of Claim purport to advance claims against all “Just Energy Entities” on behalf of both gas and electricity customers, notwithstanding the fact that:

- (a) the Jordet Action only names Just Energy Solutions as defendant and is only brought on behalf of natural gas customers;
- (b) the only named defendants in the Donin Action are JEGI and Just Energy NY and the EDNY Court dismissed all claims against JEGI’s other affiliates; and
- (c) the WDNY Court found claims prior to April 6, 2014 were time-barred in the Jordet Action.

35. The attempted expansion of the plaintiffs’ claims is illustrated in the below chart:

	Donin Complaint/ Motion to Dismiss	Donin POC	Jordet Complaint/ Motion to Dismiss	Jordet POC
Defendants	JEGI, Just Energy NY EDNY Court dismissed claims against other JEGI affiliates.	All “Just Energy Entities”	Just Energy Solutions	All “Just Energy Entities”
Defendants’ Customer Base¹¹	New York	California Delaware Georgia Illinois Indiana Maryland Massachusetts, Michigan Nevada New Jersey New York Ohio Pennsylvania Texas	California Georgia Illinois Maryland Nevada Ohio Pennsylvania Virginia	California Delaware Georgia Illinois Indiana Maryland Massachusetts, Michigan Nevada New Jersey New York Ohio Pennsylvania Texas
Defendants’ Customer Type	Largely Residential	Residential and Commercial	Largely Residential	Residential and Commercial
Product Type	Electricity and Natural Gas	Electricity and Natural Gas	Natural Gas Only	Electricity and Natural Gas
Class Period	Pleadings refer to “applicable Statute of Limitations Period” ¹²	2011-2020	WDNY Court held claims prior to April 6, 2014 are time-barred.	2011-2020

¹¹ The customer base in the “Jordet Complaint/ Motion to Dismiss” column reflects the states where natural gas was marketed by Just Energy Solutions. Just Energy Solutions marketed natural gas in these various states for different lengths of time.

¹² I am informed by Mr. Cyrulnik and believe that a six-year statute of limitations period applies to New York contract claims, which would render claims accruing prior to October 3, 2011, time-barred.

36. It is notable that the plaintiffs have not attempted to add any additional defendants (or in the case of Jordet Action, to add electricity customers) to the Putative Class Actions in the approximately four years since they were commenced.

37. Additionally, the Notices of Disallowance state that:

- (a) **Contractual Language:** The applicable contracts put customers (including the plaintiffs) on clear notice of the variable rates that the defendants would set and explicitly state that “This Agreement does not guarantee financial savings”;
- (b) **Comparison to Local Utilities is Flawed:** The plaintiffs’ allegation that the defendants breached the parties’ contracts by failing to set rates “according to business and market conditions” is premised on the erroneous assumption that local public utilities (not other energy service companies (“**ESCOs**”)) are the defendants’ main competitors, and as such the defendants overcharged when their rates were higher than that of the local utility. Local utility rates are not an appropriate barometer by which to measure the rates of ESCOs as: (i) local utilities and ESCOs offer different products and services and have different business models; and (ii) local utility commodity prices do not reflect wholesale energy prices and do not include reasonable profit margins; and
- (c) **Damages Calculations are Inflated:** The calculation of the quantum of damages in the plaintiffs’ purported expert report is speculative, highly inflated and based on a number of flawed assumptions. For instance, the report assumes that 50% of residential and commercial natural gas and electricity usage of the Just Energy Group’s customer base is attributable to customers that are parties to variable rate

contracts that would be included in the proposed class. However, currently only 2.1% and 0.04%, respectively, of natural gas and electricity usage is attributable to customers who are parties to variable rate contracts with the Just Energy Entities.

38. The Tannor Affidavit (para. 50) improperly suggests that the Notices of Disallowance “rejected the alleged class size and quantum without any evidence and without even addressing the comprehensive expert report.” To the contrary, the substantive flaws in the expert report are outlined in detail on pages 6-10 of both Notices of Disallowance.

39. The Notices of Disallowance also outlined a number of reasons as to why the Putative Class Actions are not amenable to certification pursuant to the relevant US law.

D. Communication with, and Information Provided to, Plaintiffs’ Counsel

40. The Tannor Affidavit suggests that the Applicants and the Monitor have not been responsive to information requests over the last twelve weeks. This is simply not the case.

41. The Just Energy Group and the Monitor have engaged with Plaintiffs’ Counsel since they first contacted the Monitor’s legal counsel by email on November 11, 2021. This process included signing a Confidentiality, Non-Disclosure and Non-Use Agreement (the “**NDA**”), providing Plaintiffs’ Counsel with confidential information and documents, answering numerous written questions, and arranging multiple meetings with Plaintiffs’ Counsel and its financial advisor, Tannor Capital Advisors (“**Tannor Capital**”) that have included, at various times, counsel for the Just Energy Group (“**Osler**”), the Monitor, counsel to the Monitor, and the financial advisor to the Just Energy Group.

42. The Tannor Affidavit (para. 14) notes that “Mr. Wittels also alleged [on November 10, 2021] that the Applicants had not been forthcoming in providing Class Counsel with any information as to the Applicants’ financial status.” However, this statement is misleading, as Plaintiffs’ Counsel made no requests for any information until November 11, 2021 – eight months after the Applicants filed for CCAA protection on March 9, 2021. In fact, the first time that Osler had any interaction with Mr. Wittels was when Mr. Wittels appeared at the November 10, 2021 court hearing to oppose certain relief being sought, without previously advising the Monitor or Osler that he intended to do so.

43. The following is a chronology outlining the communications with, and information provided to, Plaintiffs’ Counsel and the plaintiffs’ Canadian counsel, Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”), over the last twelve weeks, based on my discussions with Osler:

Date	Event
November 10, 2021	Plaintiffs’ Counsel appeared on a motion before Justice Koehnen and objected to the second Key Employee Retention Plan. Plaintiffs’ Counsel did not reach out to the Just Energy Group or the Monitor in advance of this Court appearance to advise of his intended opposition.
November 11, 2021	Plaintiffs’ Counsel emailed counsel for the Monitor for the first time to request a meeting to discuss being granted access to “certain financial information”. On Friday, November 12, 2021, Counsel for the Monitor responded by email to Plaintiffs’ Counsel indicating that their information request was best directed to the Just Energy Entities and copied Osler. The following Monday, November 15, 2021, Osler responded by email to Plaintiffs’ Counsel and indicated they would be contacting them to discuss the requests.
November 19, 2021	Osler, Monitor’s counsel, Plaintiffs’ Counsel, Paliare Roland, and Tannor Capital attended a call to discuss Plaintiffs’ Counsel’s request for information.

November 22, 2021	Osler provided the draft NDA to Plaintiffs' Counsel.
November 24, 2021	Plaintiffs' Counsel and Paliare Roland attended a call with Osler, the Monitor and counsel to the Monitor to discuss comments received from Plaintiffs' Counsel and Paliare Roland on the draft NDA.
November 30, 2021	After various revisions from the parties, JEGI, Plaintiffs' Counsel, Tannor Capital and Paliare Roland entered into the NDA. The NDA explicitly states that it does not create any obligation to share documents with Plaintiffs' Counsel.
December 2, 2021	Plaintiffs' Counsel provided a list of questions to Osler (the " December 2nd Questions ").
December 8, 2021	<p>Osler provided comments on the December 2nd Questions as well as copies of the Business Plan, DIP Term Sheet, and two Amendments to the DIP Term Sheet. The DIP Term Sheet and two Amendments were previously disclosed in Court filings. A copy of the answers to the December Second Questions and the Business Plan are attached as confidential Exhibits "E" and Exhibit "F", respectively, to this affidavit, as they contain confidential information and were provided pursuant to the terms of the NDA.</p> <p>Osler attended a call with Plaintiffs' Counsel, Tannor Capital, the Monitor, counsel to the Monitor, and the Just Energy Group's financial advisor to discuss the December 2nd Questions as well as the restructuring more generally.</p>
December 13, 2021	Plaintiffs' Counsel emailed an additional list of questions (the " December 13th Questions ") along with a proposed adjudication schedule to Osler.
December 15, 2021	<p>Osler responded to Plaintiffs' Counsel, noting that:</p> <ul style="list-style-type: none"> • The Just Energy Group and its advisors were working hard to develop a going concern restructuring solution for the Just Energy Entities and were not in a position to devote additional resources at that time to answer an unreasonable number of questions and inquiries from Plaintiffs' Counsel; • Sufficient information was already available to Plaintiffs' Counsel between JEGI's public company filings, the extensive documentation filed in the CCAA Proceedings, the information that had already been provided pursuant to the terms of the NDA, and the multiple discussions Plaintiffs' Counsel and their advisors had with representatives from Osler, the Monitor and its counsel and the Just Energy Group's financial advisor; and

	<ul style="list-style-type: none"> The Just Energy Group would deal with the plaintiffs' claims in the framework of the Claims Procedure Order, the plaintiffs would have 30 days from the receipt of any Notice of Revision or Disallowance to file a Notice of Dispute, and the Just Energy Group anticipated further discussions with Plaintiffs' Counsel concerning a fair and reasonable method of adjudicating the Putative Class Claims at the appropriate time.
December 17, 2021	Plaintiffs' Counsel emailed the Monitor requesting a call regarding its information requests and its proposed adjudication timetable. Copies of the correspondence from December 13-17 is attached to the Tannor Affidavit as Exhibit "O".
December 22, 2021	I understand that the Monitor attended a call with Plaintiffs' Counsel to discuss their requests and to confirm that responses to the December 13th Questions would be forthcoming.
December 23, 2021	The Monitor responded to the December 13 th Questions with the assistance of the Just Energy Entities. Among other things, the Monitor noted that in numerous instances, Plaintiffs' Counsel was asking discovery questions that were not relevant to developing an understanding of the restructuring process. A copy of the December 23 rd response is attached as confidential Exhibit "G" to this affidavit, as this contains confidential information and was provided pursuant to the terms of the NDA.
December 28, 2021	Paliare Roland emailed the Monitor requesting assistance in setting a case conference with the presiding Judge for the first week of January in order to schedule a date for a motion.
December 30, 2021	The Monitor responded with a proposal to email the Court for a case conference in the first two weeks of January. The following day, Osler indicated that it requested that any case conference be heard in the second week of January.
January 4, 2022	<p>Paliare Roland responded that it did not consent to seeking the case conference in the second week of January.</p> <p>I understand that counsel for the Monitor and the Monitor attended a call with Plaintiffs' Counsel to hear directly from them about the nature and background to their purported claims and also provide an anticipated delivery date for the Notices of Revision or Disallowance to be issued.</p> <p>The Monitor responded that same day, confirming that no plan would be presented by January 6, noting that all deadline dates under the DIP Term Sheet were extended by one week and suggesting a call to discuss the timetable for the plaintiffs' motion. A complete copy of the correspondence from December 28-January 4 is attached to this affidavit as Exhibit "H".</p>

January 5, 2022	Osler, the Monitor and its counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital attended another call and discussed, among other things, the timetable for the plaintiffs' motion and the anticipated delivery of Notices of Revision or Disallowance with respect to the Putative Class Actions in accordance with the Claims Procedure Order.
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44. With respect to the above chronology, I note that the Tannor Affidavit omitted to reference the following calls and correspondence, which results in an incomplete record:

- (a) The November 19, 2021 call amongst Osler, Monitor's counsel, Plaintiffs' Counsel, and Tannor Capital;
- (b) The fact that the Applicants' financial advisor attended the December 8th call with Plaintiffs' Counsel, Tannor Capital, Osler, the Monitor, and counsel to the Monitor;
- (c) The Monitor's response, with the assistance of the Applicants, to the December 13th Questions on December 23, 2021;
- (d) The Monitor's response to Paliare Roland's email on January 4, 2022; and
- (e) The January 5, 2022 call amongst Osler, the Monitor and its counsel, Plaintiffs' Counsel, Paliare Roland, and Tannor Capital.

45. The Tannor Affidavit (para. 45) notes that JEGI's September 30, 2021 financial statements indicate that it had approximately \$12.6 million in equity on its balance sheet. The plaintiffs extrapolate from this fact that they have a "significant stake in the CCAA Proceedings" and are therefore entitled to extensive information from the Applicants. This assumption is based on a

fundamental misunderstanding of the September 30, 2021 financial statements, a complete copy of which is attached to this affidavit as **Exhibit “I”**.

46. JEGI’s balance sheet is prepared in accordance with international financial reporting standards (“**IFRS**”) and does not necessarily represent the fair value of all the assets and liabilities of the Applicants. In particular, JEGI’s balance sheet includes approximately \$545 million of net derivative financial assets resulting from approximately \$580 million of unrealized gains on its derivative instruments in the six months ended September 30, 2021. These derivative instruments are mostly fixed supply contracts which JEGI uses to hedge the future price of electricity and natural gas associated with its fixed price contracts with its customers.¹³ These asset values are highly volatile, as they fluctuate depending on current market price for the commodity supply. This approximately \$545 million net derivative financial asset was an approximately \$40 million net financial derivative liability as at March 31, 2021. IFRS considers the commodity supply contracts to be financial derivatives and therefore these contracts are required to be marked-to-market resulting in unrealized gains (or losses) being recorded in Just Energy’s financial statements even though these supply contracts are entered into to lock in the future gross margin of JEGI under its fixed price customer contracts. It is for these reasons that JEGI has historically and consistently excluded these unrealized gains/losses from its calculation of EBITDA, as noted at page 6 of Management’s Discussion and Analysis for the three and six months ended September 30, 2021:

Just Energy ensures that customer margins are protected by entering into fixed-price supply contracts. Under IFRS, the customer contracts are not marked to market; however, there is a requirement to mark to market the future supply

¹³ Just Energy enters into derivative instruments in order to manage exposures to changes in commodity prices associated with its fixed price customer contracts. The derivative instruments that are used are designed to fix the price of supply for estimated customer commodity demand and thereby fix gross margins.

contracts. This creates unrealized and realized gains (losses) depending upon current supply pricing. Management believes that the unrealized mark to market gains (losses) do not impact the long-term financial performance of Just Energy and has excluded them from the Base EBITDA calculation.

47. Given the fact that these unrealized gains/losses are not included in the Base EBITDA calculation, the net financial derivative assets/liabilities must also be excluded when considering the true value of the equity of the company. Absent these net financial derivative assets, JEGI's balance sheet equity would have been approximately negative \$540 million as of September 30, 2021. Given the drop in commodity prices during the 3 months ended December 31, 2021, I anticipate that there will be substantial unrealized losses from JEGI's derivative instruments as at December 31, 2021 resulting in significantly lower net financial derivative assets, which will result in a substantial negative balance sheet equity value when JEGI files its financial statements as at December 31, 2021.

48. Additionally, the September 30, 2021 financial statements referred to in the Tannor Affidavit contain a Going Concern note:

Going Concern

Due to the Weather Event and associated CCAA filing, the Company's ability to continue as a going concern for the next 12 months is dependent on the Company emerging from CCAA protection, maintain liquidity, complying with DIP Facility covenants and extending the DIP Facility maturity. The material uncertainties arising from the CCAA filings cast substantial doubt upon the Company's ability to continue as a going concern and, accordingly the ultimate appropriateness of the use of accounting principles applicable to a going concern. These Interim Condensed Consolidated Financial Statements do not reflect the adjustments to carrying values of assets and liabilities and the reported expenses and Interim Condensed Consolidated Statements of Financial Position classifications that would be necessary if the going concern assumption was deemed inappropriate. These adjustments could be material. There can be no assurance that the Company will be successful in emerging from CCAA as a going concern.

49. Similar going concern notes were included in JEGI's audited financial statements for the year ended March 31, 2021 as well as the June 30, 2021 quarterly report. Full copies of these

financial statements are attached to this affidavit as **Exhibits “J” and “K”**, respectively. Additionally, various of JEGI’s news releases have contained statements regarding the potential impact of the Texas storm on the company’s ability to continue as a going concern since as early as February 22, 2021. A copy of the news release dated February 22, 2021 is attached to this affidavit as **Exhibit “L”**.

50. The information and documents relating to any proposed transaction must, out of necessity, be confidential to ensure a constructive dialogue with financial participants. It is not feasible to have other stakeholders “at the table” to second guess the Applicants or distract management from the task at hand. The Applicants, with the assistance of the Monitor, must exercise their business judgment to frame the negotiations and parties involved to achieve the desired outcome of a going concern transaction.

51. The Applicants and the Monitor have answered the reasonable and appropriate requests for information they have received to date. It is the Applicants’ view that Plaintiffs’ Counsel’s remaining information requests are overbroad, relate to confidential information about the business and restructuring, and/or are more akin to discovery questions that are not relevant to developing an understanding of the restructuring process. The Applicants continue to be willing to, in consultation with the Monitor, engage with Plaintiffs’ Counsel to address reasonable and appropriate requests for information.

E. Proposed Adjudication Schedule

52. Plaintiffs’ Counsel sent a proposed schedule to Osler on December 13, 2021 (the “**December Proposed Schedule**”), attached as Exhibit S to the Tannor Affidavit. The December Proposed Schedule suggested:

- (a) The appointment of a tripartite panel from JAMS (U.S.);
- (b) The application of the expedited procedures of the JAMS Comprehensive Arbitration Rules and Procedures governing binding Arbitrations of claims to pre-hearing discovery and the hearing;
- (c) “[S]ufficient disclosure” from the Just Energy Group;
- (d) “Circumscribed” depositions; and
- (e) A hearing lasting approximately 5-7 days to be scheduled for the first week of February 2022.

53. This proposal would have required the parties to start and complete documentary discovery, conduct depositions, prepare and exchange expert reports, and proceed to a hearing on the merits within a two-month period that included the December holiday break. The December Proposed Schedule was not a remotely achievable schedule, especially as the Applicants are in the midst of a critical time in their attempts to reorganize.

54. The December Proposed Schedule omits significant and substantive steps in the adjudication of any proposed class action. For instance, the schedule ignores the need to certify the proposed class actions in advance of any hearing on the merits. It is my understanding, including based on advice from U.S. counsel Mr. Cyrulnik, that, in the case of a class action, the court first needs to certify a class prior to any trial, including by making a determination as to whether the case satisfies the many requirements for proceeding as a class action and, if so, defining the precise scope of the permissible class based on consideration of the questions of law and fact that are common to the proposed class members. Without certifying the classes (the scope

of which are very much in contention given the plaintiffs' attempts to broaden the Putative Class Actions), it will be impossible to conduct a trial or give notice to potential class members to allow them to opt out if either of the Putative Class Actions is certified.

55. Plaintiffs' Counsel notes in their proposed schedule that they require disclosure of "information such as (i) the rates charged and usage data for Just Energy's customers in the various U.S. markets where the company supplies electricity and gas, (ii) JE's costing methodology, (iii) customer agreements utilized, and (iv) marketing materials" and that they are "prepared to furnish a more detailed list of what is needed pre-hearing." These statements conveniently gloss over the EDNY Court's ruling that discovery has been concluded in the Donin Action, as well as the fact that the named defendants in the Putative Class Actions only operated in certain jurisdictions. Similarly, Plaintiffs' Counsel ignores the fact that the time for submitting an expert report in the Donin Action has long passed.

56. The Notices of Disallowance delivered to the plaintiffs on January 11, 2022, both specified the significant steps that are required to be addressed in order to fairly and properly adjudicate the Putative Class Actions – most of which were missing from the plaintiffs' proposed adjudication schedule. In addition to the discovery that must be commenced and concluded in the Jordet Action, both actions require the completion of:

- dispositive motion practice (i.e., motion for summary judgment), which would involve the disclosure of any expert reports and supporting evidence from fact witnesses, depositions, potential preliminary motions, written briefs, and oral argument;
- a contested class certification process, which would include written briefing, presentation of supporting evidence from any fact and expert witnesses, and oral argument;

- a trial on the issue of liability, including pretrial submissions and motion practice to resolve evidentiary issues, voir dire, direct testimony and cross-examination of any fact and expert witnesses, and legal argument from counsel; and
- resolution of damages of the plaintiff or certified class(es), which may require bifurcation from the trial on liability (especially if the plaintiffs continue to allege damages on behalf of a national class, which the defendants argue is impermissible).

57. The plaintiffs' current proposed schedule, as set out in their notice of motion, is largely the same as the December Proposed Schedule. Notably, they are still seeking a hearing on the merits in February 2022 without accounting for the need to address discovery in the Jordet Action and motions for summary judgment and class certification in both Putative Class Actions.

58. On February 1, 2022, the Applicants provided the Applicants' proposed adjudication schedule to Plaintiffs' Counsel (the "**Applicants' Proposed Schedule**"). A copy of the communication to Plaintiffs' Counsel, including the Applicants' Proposed Schedule is attached to this affidavit as **Exhibit "M"**. The Applicants noted that they are willing to discuss the appointment of an arbitrator from Arbitration Place or similar forum as Claims Officer. I am advised by Osler that Arbitration Place has a roster that includes former Supreme Court of Canada and Ontario Court of Appeal judges. The Applicants' Proposed Schedule would be subject to the discretion of the Claims Officer.

59. The proposed expedited schedule for addressing both Putative Class Action Claims, along with the comparable schedule to adjudicate these Putative Class Actions in the ordinary course, is set out below:

Step	Applicants' Proposed Expedited Schedule	Potential Donin Schedule in the Ordinary Course	Potential Jordet Schedule in the Ordinary Course
Fact Discovery	After conducting a meet and confer among counsel, appropriately tailored document production by June 30, 2022 consistent with the status of the Donin and Jordet cases.	Completed/Deadline Passed	April 1, 2023
Expert Discovery	Opening Expert Disclosures: July 29, 2022 Rebuttal Expert Disclosures: August 19, 2022 Expert Depositions: August 29, 2022	Completed/Deadline Passed	Plaintiffs' Expert Disclosures: May 15, 2023 Defendants' Expert Disclosures: July 1, 2023 Expert Depositions: August 1, 2023
Dispositive Motions Hearing	November 10, 2022	September 3, 2022 (assuming pre-motion letters filed by March 3, 2022)	March 7, 2024 (assuming pre-motion letters filed September 7, 2023)
Class Certification Hearing	November 17, 2022	September 30, 2022 (assuming pre-motion letters filed March 31, 2022)	April 5, 2024 (assuming pre-motion letters October 5, 2023)
Joint Pretrial Order/Pretrial Conference	December 9, 2022	June 8, 2023	December 5, 2024
Trial	February 10, 2023	September 11, 2023	January 6, 2025

60. It is my understanding, including based on advice from Mr. Cyrulnik, that the schedules listed in the last two columns of the above chart may well be ambitious estimations of the “ordinary

course” schedules for hearing the Putative Class Actions, based on the assumptions set out in the relevant footnotes in the Applicants’ Proposed Schedule.

61. As a reference point, the Applicants’ compressed schedule provides for the hearing of the certification and summary judgment motions in November 2022, almost a year and a half before such motions would be heard in the Jordet Action in the ordinary course. If the plaintiffs are successful on both of these motions, a trial with respect to any certified common issues would commence by February 10, 2023 – approximately three years before any such trial would have been heard in the Jordet Action and seven months before any trial would have been heard in the Donin Action.

62. Management of the Applicants will be directly engaged in document production, attending depositions, and supervising and supporting litigation efforts in the Putative Class Actions at a time when they are focused on implementing a going concern restructuring for the business. The first step in the proposed schedule – document production – will be a burdensome step for management, as there has been no discovery in the Jordet Action to date. By way of illustration, document production in the Donin Action took nearly two years to complete. The preliminary list of disclosure requests sought by the plaintiffs is broad and confirms that the discovery process will not be a simple or quick exercise.

63. The Applicants’ Proposed Schedule was advanced in an effort to strike a balance between available management resources to both successfully conclude a restructuring transaction and the need to finalize creditor claims in a timely fashion. The complexity of developing a plan for the Applicants was recognized by this Court in granting the Applicants’ last request for a stay extension:

- 32 -

The company has been moving in good faith towards a plan, but the business is of such a complexity that it has taken longer than initially anticipated. This is not surprising. The company is subject to a myriad of regulatory regimes across the United States and Canada. It has complex commercial arrangements with suppliers and a number of secured and unsecured lenders, the integrity of which in turn depends on Just Energy's compliance with regulatory requirements.

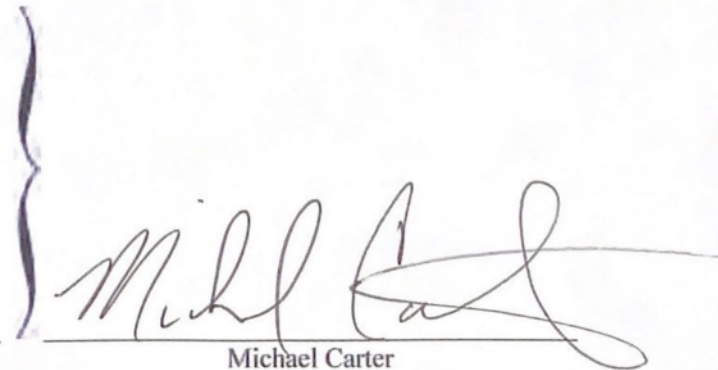
64. If anything, the time pressure imposed on management to negotiate a restructuring plan while operating the business has become even more intense and all consuming.

65. In the circumstances, the Applicants could not justify a more abridged timetable for adjudicating the Putative Class Actions. The restructuring negotiations of this billion-dollar company must continue to be the focus of management for the benefit of its stakeholders, including any potential class members. Management simply does not have the "bandwidth" to further accelerate the Applicants' Proposed Schedule, as this would undoubtedly be a distraction and strain on management resources during a critical phase of the restructuring. It is also imperative that any schedule allow for a full and fair consideration of the merits of the Putative Class Claims to ensure the integrity of the process and to avoid prejudice to unsecured creditors with competing claims.

SWORN BEFORE ME over video
teleconference this 2nd day of February, 2022
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the Town of Flower Mound, in the
State of Texas while the Commissioner was
located in the City Toronto, in the Province of
Ontario.



Commissioner for Taking Affidavits
Karin Sachar (LSO No. 59944E)



Michael Carter

*THIS IS EXHIBIT "T" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell". The signature is written in a cursive style with a small dot at the end of the last letter.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

2022
THIRD QUARTER
REPORT TO
SHAREHOLDERS

Q3



Management's discussion and analysis - February 16, 2022

The following management's discussion and analysis ("MD&A") is a review of the financial condition and operating results of Just Energy Group Inc. ("Just Energy" or the "Company") for the three and nine months ended December 31, 2021. This MD&A has been prepared with all information available up to and including February 16, 2022. This MD&A should be read in conjunction with Just Energy's unaudited Interim Condensed Consolidated Financial Statements (the "Interim Condensed Consolidated Financial Statements") for the three and nine months ended December 31, 2021. The financial information contained herein has been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"). All dollar amounts are expressed in Canadian dollars unless otherwise noted. Quarterly reports, the annual report and supplementary information can be found on Just Energy's corporate website at investors.justenergy.com. Additional information can be found on SEDAR at www.sedar.com or on the U.S. Securities and Exchange Commission's ("SEC") website at www.sec.gov.

WEATHER EVENT AND CREDITOR PROTECTION FILINGS

In February 2021, the State of Texas experienced extremely cold weather (the "Weather Event"). The Weather Event led to increased electricity demand and sustained high prices from February 13, 2021 through February 20, 2021. As a result of the losses sustained and without sufficient liquidity to pay the corresponding invoices from the Electric Reliability Council of Texas, Inc. ("ERCOT") when due on March 9, 2021, Just Energy applied for and received creditor protection under the Companies' Creditors Arrangement Act (Canada) ("CCAA") from the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court") and under Chapter 15 ("Chapter 15") in the United States from the Bankruptcy Court of the Southern District of Texas, Houston Division ("CCAA Proceedings"). Protection under the Court Orders allows Just Energy to operate while it restructures its capital structure.

As part of the CCAA filing, the Company entered into a USD \$125 million Debtor-In-Possession ("DIP Facility") financing with certain affiliates of Pacific Investment Management Company ("PIMCO"). The Company entered into Qualifying Support Agreements with its largest commodity supplier and ISO services provider. The Company entered into a Lender Support Agreement with the lenders under its Credit Facility (for details refer to Note 9(c) in the Interim Condensed Consolidated Financial Statements). The filings and associated USD \$125 million DIP Facility arranged by the Company, enabled Just Energy to continue all operations without interruption throughout the U.S. and Canada and to continue making payments required by ERCOT and satisfy other regulatory obligations.

On February 9, 2022, the stay period under the CCAA Proceedings was extended by the Ontario Court to March 4, 2022.

On September 15, 2021, the Ontario Court approved the Company's request to establish a claims process to identify and determine claims against the Company and its subsidiaries that are subject to the ongoing CCAA Proceedings (the "Claims Procedure Order"). As part of the CCAA Proceedings and in accordance with the Claims Procedure Order, Just Energy continues to review and determine which claims will be allowed, modified or disallowed which may result in additional liabilities subject to compromise that are not currently reflected in the Interim Condensed Consolidated Financial Statements. See Legal Proceedings on page 23 for more information.

As at December 31, 2021, in connection with the CCAA Proceedings, the Company has identified \$1,049.7 million of liabilities subject to compromise (see Note 1 in the Interim Condensed Consolidated Financial Statements). The Company also recorded Reorganization Costs (defined below in Key Terms) of \$79.6 million in the nine months ended December 31, 2021 (see Note 14 in the Interim Condensed Consolidated Financial Statements).

The Common Shares, no par value, of the Company (the "Common Shares") are listed on the TSX Venture Exchange under the symbol "JE" and on the OTC Pink Market under the symbol "JENGO".

SECURITIZATION UNDER HOUSE BILL 4492

On June 16, 2021, Texas House Bill 4492 ("HB 4492") became law in Texas. HB 4492 provides a mechanism for recovery of (i) ancillary service charges above USD \$9,000/MWh during the Weather Event; (ii) reliability deployment price adders charged by ERCOT during the Weather Event; and (iii) amounts owed to ERCOT due to defaults of competitive market participants, which were subsequently "short-paid" to market participants, including Just Energy, (collectively, the "Costs"), incurred by various parties, including the Company, during the Weather Event, through certain securitization structures.

On October 13, 2021, the Public Utility Commission of Texas ("PUCT") approved the financing order ("Final Order") authorizing the securitization of these costs by ERCOT. On December 7, 2021, ERCOT filed its calculation with the PUCT in accordance with the PUCT final order implementing HB 4492. The Company is expecting to receive reimbursement of Costs in the amount of approximately USD \$147.5 million (the "Cost Recovery"). The Cost Recovery is expected to be received in the Spring of 2022. Management determined that the Company has reasonable assurance as defined under IAS 20, *Accounting for government grants and assistance to receive the Cost Recovery*. *The Company has recorded the Cost Recovery in the three months ended December 31, 2021, as a receivable and a corresponding decrease to cost of goods sold.*

SALE OF ECOBEE INVESTMENT

On November 1, 2021, Generac Holdings Inc. ("Generac") announced the signing of an agreement to acquire all of the issued and outstanding shares of ecobee Inc. ("ecobee"), including all of the ecobee shares held by the Company. The Company held

approximately 8% of the ecobee shares. The transaction closed on December 1, 2021 and the Company received \$15.6 million cash and 80,281 shares of Generac common stock. The Company subsequently sold all of the Generac shares for a sum of \$36 million during December 2021 resulting in total consideration of approximately \$51.6 million. This has resulted in a gain on investment of \$18.7 million recorded in the Interim Condensed Consolidated Statement of Income for the nine months ended December 31, 2021. The Company could receive up to an additional approximate \$10 million in Generac stock over calendar 2022 and 2023, provided that certain performance targets are achieved by ecobee.

Forward-looking information

This MD&A may contain forward-looking statements, including with respect to the amount of cost recovery proceeds Just Energy expects to receive from ERCOT under HB 4492. These statements are based on current expectations that involve several risks and uncertainties which could cause actual results to differ from those anticipated. These risks may include, but are not limited to, risks with respect to the recovery of and timing for the Company to receive any proceeds from ERCOT; the ability of the Company to continue as a going concern; the outcome of proceedings under the CCAA proceedings and similar legislation in the United States; the outcome of any potential litigation with respect to the Weather Event, the outcome of any invoice dispute with ERCOT; the Company's discussions with key stakeholders regarding the CCAA proceedings and the outcome thereof; the impact of the evolving COVID-19 pandemic on the Company's business, operations and sales; reliance on suppliers; uncertainties relating to the ultimate spread, severity and duration of COVID-19 and related adverse effects on the economies and financial markets of countries in which the Company operates; the ability of the Company to successfully implement its business continuity plans with respect to the COVID-19 pandemic; the Company's ability to access sufficient capital to provide liquidity to manage its cash flow requirements; general economic, business and market conditions; the ability of management to execute its business plan; levels of customer natural gas and electricity consumption; extreme weather conditions; rates of customer additions and renewals; customer credit risk; rates of customer attrition; fluctuations in natural gas and electricity prices; interest and exchange rates; actions taken by governmental authorities including energy marketing regulation; increases in taxes and changes in government regulations and incentive programs; changes in regulatory regimes; results of litigation and decisions by regulatory authorities; competition; and dependence on certain suppliers. Additional information on these and other factors that could affect Just Energy's operations or financial results are included in Just Energy's annual information form and other reports on file with Canadian securities regulatory authorities which can be accessed through the SEDAR website at www.sedar.com and on the U.S. Securities and Exchange Commission's website at www.sec.gov or through Just Energy's website at www.investors.justenergy.com.

Company overview

Just Energy is a retail energy provider specializing in electricity and natural gas commodities, energy efficient solutions, carbon offsets and renewable energy options. Operating in the United States ("U.S.") and Canada, Just Energy serves both residential and commercial customers, providing homes and businesses with a broad range of energy solutions that deliver comfort, convenience and control. Just Energy is the parent company of Amigo Energy, Filter Group Inc. ("Filter Group"), Hudson Energy, Interactive Energy Group, Just Energy, Tara Energy, Interactive Energy Group, Tara Energy and Terrapass.

Just Energy Group



*THIS IS EXHIBIT "U" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell". The signature is written in a cursive style with a small dot at the end of the last letter.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

March 2, 2022

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- Appendix “A” Written Reasons of the Honourable Justice McEwen dated February 23, 2022
- Appendix “B” Notice of Motion for Leave to Appeal
- Appendix “C” Cash Flow Forecast for the period ending April 2, 2022

**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**”)

SIXTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the protections

of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); and (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”).

3. The Initial Order was amended and restated on March 19, 2021 and most recently on May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. The Stay Period has been extended by the Court from time to time, including, most recently, on February 9, 2022, until March 4, 2022.
7. On February 9, 2022 (the “**February 9 Hearing**”), Justice McEwen denied certain relief, with reasons to follow, requested by counsel (“**Plaintiffs’ Counsel**”) for Fira Donin and Inna Golovan in their capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the

“**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). On February 23, 2022, Justice McEwen released his written reasons relating to Plaintiffs’ Counsel requested relief (the “**McEwen Endorsement**”).

8. All references to monetary amounts in this Sixth Report of the Monitor (the “**Sixth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
9. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
10. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

11. The purpose of this Sixth Report is to provide information to the Court with respect to the following:
 - (a) certain developments with respect to the Donin/Jordet Action, including the filing by Plaintiffs’ Counsel of a motion for leave to appeal the decision of this Court to the Ontario Court of Appeal;
 - (b) the Monitor’s activities since the Monitor’s Fifth Report to the Court dated February 4, 2022 (the “**Fifth Report**”);
 - (c) the restructuring activities of the Just Energy Entities since the date of the Fifth Report;
 - (d) the Just Energy Entities’ actual cash receipts and disbursements for the 4-week period ending February 26, 2022, and a comparison to the cash flow forecast attached as Appendix “B” to the Fifth Report, along with an updated cash flow forecast for the period ending April 2, 2022;

- (e) the relief sought by the Applicants in their proposed Order (the “**Proposed Order**”) to extend the Stay Period to March 25, 2022; and
- (f) the Monitor’s views in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this Sixth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
13. Except as otherwise described in this Sixth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Sixth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Sixth Report is based on assumptions regarding future events. Actual results will vary from these forecasts, and such variations may be material.
15. The Monitor has prepared this Sixth Report to provide information to the Court in connection with the relief requested by the Applicants. This Sixth Report should not be relied on for any other purpose.

UPDATE ON DONIN/JORDET ACTIONS

Background

16. The background to the Donin/Jordet Actions and the relief requested by Plaintiffs' Counsel at the February 9 Hearing was detailed in the Fifth Report.
17. In brief, Plaintiffs' Counsel represents a proposed class of putative claimants that has submitted claims against the Just Energy Entities in the aggregate amount of US\$3.66 billion (the "**Donin/Jordet Claims**") in accordance with the Claims Procedure Order.
18. The Monitor has met with Plaintiffs' Counsel on several occasions at its request to gain an understanding of their claims and provided, in conjunction with the Applicants, adequate responses in the Monitor's view, to information requests prepared by the Plaintiffs' Counsel's financial advisor.
19. Following a thorough review of the Donin/Jordet Claims, and in consultation with the Monitor, the Just Energy Entities prepared, in accordance with the Claims Procedure Order, Notices of Revision or Disallowance and disallowed the Donin/Jordet Claims in their entirety, which were delivered to the claimants by the Monitor on January 11, 2022.
20. Plaintiffs' Counsel subsequently filed a motion for advice and direction (the "**Donin/Jordet Motion**") that was heard by the Court at the February 9 Hearing. The relief requested by the Plaintiffs' Counsel was described in the McEwen Endorsement as follows (the "**Requested Relief**"):
 - (a) an order declaring the class claimants in the Donin/Jordet Claims to be unaffected by the CCAA Proceedings;
 - (b) in the alternative, an order directing amongst other things, "a timely schedule and process" leading to the final adjudication of the Donin/Jordet Claims prior to the Court's determination of the Applicants' plan of compromise and arrangement (to be filed), or other event to exit the CCAA Proceedings; and
 - (c) access to any data room / appointing a mediator/arbitrator to resolve disputes / production of specific documents listed in the Notice of Motion / and a compulsory meeting between the Applicants and the plaintiffs' U.S. counsel.

The Court's Decision on the Donin/Jordet Motion

21. The Court dismissed the Donin/Jordet Motion in its entirety. The Court's reasons for the dismissal are set out in the McEwen Endorsement, which is attached hereto as **Appendix "A"**.

Appeal of the Court's Determination

22. On February 24, 2022, Plaintiffs' Counsel filed a Notice of Motion for Leave to Appeal the McEwen Endorsement (the "**Notice for Leave to Appeal**"). A copy of the Notice for Leave to Appeal is attached hereto as **Appendix "B"**.
23. The Monitor is reviewing the Notice for Leave to Appeal and intends to report on it as applicable in a future report to the Court
24. In addition to filing the Notice for Leave to Appeal, Plaintiffs' Counsel submitted additional information requests to the Monitor on February 25, 2022. The Monitor has reviewed the additional information requests with the Applicants and arranged for a preliminary conference call amongst Plaintiffs' Counsel, the Applicants, and the Monitor to respond to and discuss such requests.

MONITOR'S ACTIVITIES SINCE THE FIFTH REPORT

25. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Fifth Report have included the following:
 - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
 - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of

Revision or Disallowance (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;

- (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
- (e) assisting the Just Energy Entities to update and extend their cash flow forecasts;
- (f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of the Plan;
- (g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts and presentations; and
 - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (l) preparing this Sixth Report.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

26. The Just Energy Entities continue to advance the development of the Plan and have consulted extensively with key stakeholders in that regard to seek a viable going-concern solution for the business.
27. The Plan is intended to facilitate emergence from the CCAA Proceedings, preserve the going concern value of the business, maintain customer relationships, and preserve employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.
28. In its Fifth Report, the Monitor noted that the Just Energy Entities intended to bring a motion before the Court on March 3, 2022 to seek the authority to file the Plan and request that the Court grant a Meeting Order. As noted in the McEwen Endorsement however, there was a possibility that the hearing scheduled for March 3, 2022 would need to be delayed if the Plan was not prepared in time.
29. Despite the best efforts of the Just Energy Entities and key stakeholders, which the Monitor has been closely observing, the Just Energy Entities are not yet in a position to present the Plan to the Court. The Just Energy Entities are at a critical juncture of their Plan negotiations and discussions with key stakeholders, and require additional time to finalize and file the Plan.

RECEIPTS AND DISBURSEMENTS FOR THE 4-WEEK PERIOD ENDED FEBRUARY 26, 2022

30. The Just Energy Entities’ actual net cash flow for the 4-week period from January 30, 2022 to February 26, 2022, was approximately \$46.7 million lower than the Cash Flow Forecast appended to the Fifth Report (the “**February Cash Flow Forecast**”) as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
RECEIPTS			
Sales Receipts	\$255.1	\$228.1	(\$27.0)
Miscellaneous Receipts	-	-	-
<i>Total Receipts</i>	\$255.1	\$228.1	(\$27.0)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$173.5)	(\$196.6)	(\$23.1)
ERCOT Resettlements	-	-	-
Payroll	(7.8)	(7.2)	0.6
Taxes	(11.2)	(10.3)	0.8
Commissions	(9.5)	(7.7)	1.9
Selling and Other Costs	(13.6)	(12.4)	1.1
<i>Total Operating Disbursements</i>	(\$215.5)	(\$234.3)	(\$18.7)
OPERATING CASH FLOWS	\$39.5	(\$6.2)	(\$45.8)
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(1.0)	(1.1)	(0.1)
<i>Restructuring Disbursements</i>			
Professional Fees	(5.3)	(6.2)	(0.8)
NET CASH FLOWS	\$33.2	(\$13.5)	(\$46.7)
CASH			
Beginning Balance	\$131.9	\$131.9	\$ -
Net Cash Inflows / (Outflows)	33.2	(13.5)	(46.7)
Other (FX)	-	0.3	0.3
ENDING CASH	\$165.1	\$118.7	(\$46.4)

31. Explanations for the main variances in actual receipts and disbursements as compared to the February Cash Flow Forecast are as follows:
- (a) The unfavourable variance of approximately \$27.0 million in sales receipts is primarily comprised of the following:
 - (i) an unfavourable variance of approximately \$16.0 million due to lower than forecast sales receipts in respect of U.S. residential customers;
 - (ii) an unfavourable variance of approximately \$0.9 million due to lower than forecast sales receipts in respect of U.S. commercial customers; and

- (iii) an unfavourable variance of approximately \$10.1 million primarily due to lower than forecast sales receipts in respect of Canadian residential and commercial customer billings;

Management expects the unfavourable timing variance in Sales Receipts, which are driven by timing of collections, to reverse in future weeks as contemplated in the March Cash Flow Forecast (as defined below).

- (b) The unfavourable variance of approximately \$23.1 million in respect of Energy and Delivery Costs is primarily driven by the following:
 - (i) a permanent unfavourable variance of approximately \$17.2 million due to higher commodity payments, partially driven by increased pricing and load during certain winter storms during the 4-week forecast period; and
 - (ii) a permanent unfavourable variance of approximately \$5.9 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;
- (c) The permanent favourable variance of approximately \$1.9 million for Commissions is primarily due to normal course fluctuations related to customer sign-ups and associated commissions; and
- (d) The permanent favourable variance of approximately \$1.1 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors.

Reporting Pursuant to the DIP Term Sheet

- 32. The variances shown and described herein compare the February Cash Flow Forecast, as appended to the Fifth Report, with the actual performance of the Just Energy Entities over the 4-week period noted.
- 33. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which

certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week period ended February 5, 2022. All variances reported were within the permitted variances.

34. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the "**DIP Cash Flow Forecasts**"). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week period beginning February 6, 2022.
35. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the February Cash Flow Forecast for the same period, the DIP Variance Reports differed from the variance analysis above that compares actual results to the February Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
36. Since the Fifth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
 - (a) Delivery of a Priority Supplier Payables Certificate monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;
and
 - (e) Delivery of a Marked to Market Calculation monthly.

CASH FLOW FORECAST FOR THE 5-WEEK PERIOD ENDING APRIL 2, 2022

37. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 5-week period ending April 2, 2022 (the “**March Cash Flow Forecast**”), which encompasses the requested stay extension to March 25, 2022. The March Cash Flow Forecast is attached hereto as **Appendix “C”**, and is summarized below:

<i>(CAD\$ in millions)</i>	5-Week Period Ending April 2, 2022
Forecast Week	Total
RECEIPTS	
Sales Receipts	\$287.6
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$287.6
DISBURSEMENTS	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$225.6)
Payroll	(12.4)
Taxes	(10.9)
Commissions	(10.4)
Selling and Other Costs	(13.8)
<i>Total Operating Disbursements</i>	(\$273.0)
OPERATING CASH FLOWS	\$14.6
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(9.8)
<i>Restructuring Disbursements</i>	
Professional Fees	(7.3)
NET CASH FLOWS	(\$2.5)
CASH	
Beginning Balance	\$118.7
Net Cash Inflows / (Outflows)	(2.5)
Other (FX)	-
ENDING CASH	\$116.2

38. The March Cash Flow Forecast indicates that during the 5-week period ending April 2, 2022, the Just Energy Entities will have operating cash inflows of approximately \$14.6 million with total receipts of approximately \$287.6 million and total operating disbursements of approximately \$273.0 million, before interest expense and fees of

approximately \$9.8 million (which includes quarterly interest payments under the credit facilities advanced by each of the DIP Lenders and the Credit Facility Lenders) and professional fees of approximately \$7.3 million, such that total net cash outflows are forecast to be approximately \$2.5 million.

39. Generally, the underlying assumptions and methodology utilized in the February Cash Flow Forecast have remained the same for this March Cash Flow Forecast; however, the Monitor notes the following:
- (a) The forecast period was extended from the week ending March 12, 2022 to the week ending April 2, 2022;
 - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the March Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain expenses not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
40. The March Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient

liquidity to continue funding their operations during the CCAA Proceedings to April 2, 2022.

STAY EXTENSION

41. The Stay Period will expire on March 4, 2022, and the Applicants are seeking an extension to the Stay Period up to and including March 25, 2022.
42. The Monitor supports extending the Stay Period to March 25, 2022 for the following reasons:
 - (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to hopefully finalize the Plan in an effort to achieve a going concern solution in consultation with the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;
 - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with the flexibility and time required to develop and commence steps to implement a successful restructuring;
 - (c) as indicated by the March Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
 - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
 - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

APPROVAL OF THE ACTIVITIES OF THE MONITOR

43. The Proposed Order also seeks approval of this Sixth Report and the actions, conduct, and activities of the Monitor since the date of the Fifth Report.

44. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Fifth Report have been carried out in good faith and in accordance with the provisions of the orders issued in these CCAA Proceedings and should therefore be approved.

CONCLUSION

45. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
46. Accordingly, the Monitor respectfully supports the requested extension of the Stay Period in the Proposed Order and recommends that such Order be granted.

The Monitor respectfully submits to the Court this Sixth Report dated this 2nd day of March, 2022.

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

Per:



Paul Bishop
Senior Managing Director

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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

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Lawyers for the Court-appointed Monitor,
FTI Consulting Canada Inc.

*THIS IS EXHIBIT "V" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell". The signature is written in a cursive style with a small dot at the end of the last letter.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

March 22, 2022

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APPENDICES

Appendix “A” Cash Flow Forecast for the 6-week period ending April 30, 2022

**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**”)

SEVENTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the

protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and most recently on May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. On February 9, 2022, the Court denied certain relief, with reasons to follow, requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their capacity

as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons for the dismissal are set out in the written reasons dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement on February 24, 2022.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O’Connor as Claims Officer with respect to claims relating to the Donin/Jordet Actions.
8. All references to monetary amounts in this Seventh Report of the Monitor (the “**Seventh Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
9. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
10. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

11. The purpose of this Seventh Report is to provide information to the Court with respect to the following:
 - (a) the Monitor’s activities since the Monitor’s Sixth Report to the Court dated March 2, 2022 (the “**Sixth Report**”);
 - (b) the restructuring activities of the Just Energy Entities since the date of the Sixth Report with respect to the development of a recapitalization plan (the “**Plan**”);

- (c) an update on the Claims Procedure and the resolution of Claims pursuant to the Claims Procedure Order;
- (d) the Just Energy Entities' actual cash receipts and disbursements for the 3-week period ending March 19, 2022, and a comparison to the cash flow forecast attached as Appendix "C" to the Sixth Report, along with an updated cash flow forecast for the period ending April 30, 2022;
- (e) the relief sought by the Applicants in their proposed Order (the "**Proposed Order**") to extend the Stay Period to April 22, 2022; and
- (f) the Monitor's views in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

12. In preparing this Seventh Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").
13. Except as otherwise described in this Seventh Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Seventh Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
14. Future-oriented financial information reported in or relied on in preparing this Seventh Report is based on assumptions regarding future events. Actual results will vary from these forecasts, and such variations may be material.

15. The Monitor has prepared this Seventh Report to provide information to the Court in connection with the relief requested by the Applicants. This Seventh Report should not be relied on for any other purpose.

MONITOR'S ACTIVITIES SINCE THE SIXTH REPORT

16. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Sixth Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, the Claims Procedure, communications with stakeholders and business operations;
 - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;
 - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
 - (e) assisting the Just Energy Entities to update and extend their cash flow forecasts;
 - (f) working with and providing input to the Just Energy Entities and other stakeholders to assist with the development of a plan of compromise or arrangement (the "**Plan**");
 - (g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information as appropriate in the circumstances;

- (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts and presentations; and
- (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to many creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) facilitating responses by the Just Energy Entities to information requested by counsel to the representative plaintiffs in the Donin/Jordet Actions;
- (k) attending a case conference before the Honourable Justice O'Connor to determine procedural and other matters in connection with the adjudication of the Donin/Jordet Actions;
- (l) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (m) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (n) preparing this Seventh Report.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

17. The Just Energy Entities continue to advance the development of the Plan and have consulted and worked extensively with key stakeholders to seek a viable going-concern solution for the business.
18. The Plan is intended to facilitate the Just Entity Entities' emergence from the CCAA Proceedings while preserving the going concern value of the business, maintaining

customer relationships, and preserving employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.

19. In its Fifth Report to the Court dated February 4, 2022 (the “**Fifth Report**”), the Monitor noted that the Just Energy Entities intended to bring a motion before the Court on March 3, 2022 to seek the authority to file the Plan and request that the Court grant a Meeting Order. As noted in the Sixth Report, despite the best efforts of the Just Energy Entities and key stakeholders, which the Monitor has been closely observing, the Just Energy Entities were not yet in a position to present the Plan to the Court at that date.
20. Since that time, in consultation with the Monitor, discussions and negotiations with the Just Energy Entities’ key stakeholders with respect to the Plan have continued in earnest; however, the Just Energy Entities are not yet in a position to present the Plan to the Court.
21. The Just Energy Entities are at a critical juncture of their Plan negotiations and discussions with key stakeholders and require additional time to finalize and file the Plan. The Just Energy Entities are therefore seeking an additional short extension of the Stay Period and intend to file a Plan during the proposed extension. If, notwithstanding the Just Energy Entities’ best efforts, they are unable to file a motion seeking a Meeting Order prior to April 22, 2022, they intend to seek direction from the Court regarding their ongoing restructuring efforts and the CCAA Proceedings.
22. Should the Stay Period be extended to April 22, 2022, the Monitor will provide an update to the Court regarding the status of the Plan discussions and any progress in the negotiations, on April 7, 2022.

UPDATE ON CLAIMS PROCEDURE

23. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Claims Procedure Order.
24. The Monitor last reported on the Claims Procedure in the Fifth Report. Since the date of the Fifth Report, the Monitor, with assistance of the Claims Agent and the Just Energy

Entities, has taken the following steps with respect to the Claims received by the Monitor:

- (a) reviewed, recorded, and categorized all Claims including any additional Claims which were received after the date of the Fifth Report;
- (b) continued to review and attempt to determine and/or resolve Claims received to date;
- (c) issued several Notices of Revision or Disallowance, as prepared by the Just Energy Entities, in consultation with the Monitor, in respect of disallowed Claims;
- (d) notified creditors of certain Claims accepted by the Just Energy Entities;
- (e) engaged in numerous discussions and correspondence with various creditors who filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant where appropriate; and
- (f) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.

Overview of Claims

25. A summary of the Claims submitted in the Claims Procedure segregated by priority and category of the Claim is presented in the table below. Amounts presented are inclusive of potential duplicate and/or erroneous Claims and represent the total Claims received by the Just Energy Entities and recorded by the Monitor.

Category	Total Claims		
	Secured	Unsecured	TOTAL
<i>(amounts stated in millions of CAD)</i>			
Funded Debt	\$ 331	\$ 1,168	\$ 1,499
Commodity & Financial	852	119	970
Litigation	-	10,024	10,024
Tax & Unclaimed Property	0	95	95
Trade & Other	26	511	537
D&O	-	1,554	1,554
Total Claims Received	\$ 1,209	\$ 13,471	\$ 14,680

26. Since the date of the Fifth Report, the Monitor has recorded an additional \$19 million in Claims. The following provides an overview of these additionally recorded Claims, all of which were filed as unsecured:
- two Late-Filed Claims (as defined in the Fifth Report) were submitted by government bodies for taxes owing and have been recorded in the Tax & Unclaimed Property category;
 - one Restructuring Claim filed by a former employee of the Just Energy Entities was recorded in the Trade & Other category; and
 - sixty-eight Claims previously recorded as marker claims were amended as part of a Dispute of a Notice of Revision or Disallowance to now assert a dollar value totaling approximately \$19 million. These amended Claims pertain to individuals who have sought to assert tort and/or similar Claims against the Just Energy Entities in relation to the Texas weather event. These Claims were recorded in the Litigation category.

Resolution status of Claims

27. The Just Energy Entities, with assistance from and in consultation with the Monitor, are in the process of reviewing the Negative Notice Claims, Notices of Dispute of Claim, Proofs of Claim, and Disputes of Notices of Revision or Disallowance received in accordance with the Claims Procedure Order and are actively working to investigate, and/or resolve the Claims as applicable. A summary of the current resolution status of the Claims is presented in the table below:

Category	Accepted or Deemed Accepted	Under Review	Dispute Resolution in Process	Sub-total Claims Pool	Duplicative Claims or Claim Value Reductions	Total Claims Pool	Disallowed	Rescinded Negative Notices / Withdrawn	Total Claims
(amounts stated in millions of CAD)	A	B	C	D= A+ B+ C	E	F= D+ E	G	H	= F+ G+ H
Funded Debt	\$ 620	\$ 13	\$ -	\$ 633	\$ -	\$ 633	\$ -	\$ 866	\$ 1,499
Commodity & Financial	484	61	0	545	310	855	-	115	970
Litigation	-	1	4,836	4,836	4,828	9,665	359	0	10,024
Tax & Unclaimed Property	2	73	-	75	20	95	0	-	95
Trade & Other	11	47	3	62	433	495	3	40	537
D&O	-	0	118	118	0	118	1,436	-	1,554
Total Claims Received	\$ 1,117	\$ 196	\$ 4,956	\$ 6,269	\$ 5,591	\$ 11,860	\$ 1,799	\$ 1,021	\$ 14,680

28. The following provides an overview of the current resolution status of the Claims:

- (a) Accepted or Deemed Accepted: “Accepted or Deemed Accepted” Claims total approximately \$1,117 million of which approximately \$304 million are unsecured amounts;
- (b) Under Review: “Under Review” Claims total approximately \$196 million and include Claims where no formal response has yet been issued to the Claimant. Approximately \$135 million of the “Under Review” Claims are unsecured;
- (c) Dispute Resolution in Process: “Dispute Resolution in Process” Claims relate to Claims where the Monitor, in consultation with the Just Energy Entities, has issued a Notice of Revision or Disallowance and in which a Notice of Dispute of Revision or Disallowance was subsequently received from the respective Claimants or where the dispute period has not yet elapsed. These Claims are unsecured and total approximately \$4,956 million;
- (d) Duplicative Claims or Claim Value Reductions: “Duplicative Claims or Claim Value Reductions” include Claims which have yet to be fully resolved and have been either (i) identified as potentially being duplicative of another Claim recorded by the Monitor, and/or (ii) the unresolved Claim amount has been reduced through the resolution process described in the Claims Procedure Order. These Claims total approximately \$5,591 million and are expected to be excluded from the final Claims pool. Approximately \$5,282 million of these Claims are unsecured;
- (e) Disallowed: “Disallowed Claims” total approximately \$1,799 million and relate to resolved Claims where the full Claim or a portion of the Claim has been disallowed by the Just Energy Entities, in consultation with the Monitor, and where the Claimants have not responded with a Dispute of Notice of Revision or Disallowance within the applicable time period; and
- (f) Rescinded Negative Notices / Withdrawn: “Rescinded Negative Notices / Withdrawn Claims” total approximately \$1,021 million and relate to fully resolved Claims which have been withdrawn by the Claimant or where the Just Energy Entities, in consultation with the Monitor, have rescinded a Negative Notice Claim for various reasons (most commonly in connection with the disallowance of a duplicative Claim filed by the Claimant).

29. The Just Energy Entities, in consultation with the Monitor, continue to review and adjudicate the Claims received in accordance with the Claims Procedure Order and intend to provide further updates to this Court as these proceedings progress.

RECEIPTS AND DISBURSEMENTS FOR THE 3-WEEK PERIOD ENDED MARCH 19, 2022

30. The Just Energy Entities' actual net cash flow for the 3-week period from February 27, 2022 to March 19, 2022, was approximately \$92.3 million better than the Cash Flow Forecast appended to the Sixth Report (the "March Cash Flow Forecast") as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
RECEIPTS			
Sales Receipts	\$152.4	\$192.0	\$39.6
Miscellaneous Receipts	-	-	-
<i>Total Receipts</i>	\$152.4	\$192.0	\$39.6
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$116.8)	(\$69.1)	\$47.8
Payroll	(6.1)	(5.2)	0.9
Taxes	(6.2)	(6.0)	0.2
Commissions	(5.3)	(4.1)	1.2
Selling and Other Costs	(8.4)	(5.6)	2.8
<i>Total Operating Disbursements</i>	(\$142.8)	(\$90.0)	\$52.8
OPERATING CASH FLOWS	\$9.6	\$102.0	\$92.3
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(1.6)	(1.1)	0.5
<i>Restructuring Disbursements</i>			
Professional Fees	(2.2)	(3.4)	(1.2)
NET CASH FLOWS	\$5.8	\$97.5	\$91.6
CASH			
Beginning Balance	\$118.7	\$119.6	\$0.9
Net Cash Inflows / (Outflows)	5.8	97.5	91.6
Other (FX)	-	(0.3)	(0.3)
ENDING CASH	\$124.5	\$216.8	\$92.3

31. Explanations for the main variances in actual receipts and disbursements as compared to the March Cash Flow Forecast are as follows:
- (a) The favourable variance of approximately \$39.6 million in Sales Receipts is primarily comprised of the following:
 - (i) A favourable variance of approximately \$18.6 million due to higher than forecast sales receipts due to timing, which offset lower receipts in prior periods, in respect of U.S. residential customers;
 - (ii) A favourable variance of approximately \$14.5 million due to higher than forecast sales receipts due to timing, which offset lower receipts in prior periods, in respect of U.S. commercial customers; and
 - (iii) A favourable variance of approximately \$6.5 million primarily due to higher than forecast sales receipts due to timing, which offset lower receipts in prior periods, in respect of Canadian residential and commercial customer billings;
 - (b) The favourable variance of approximately \$47.8 million in respect of Energy and Delivery Costs is primarily driven by the following:
 - (i) A favourable timing variance of approximately \$26.4 million due to commodity payments being made the week after instead of the last week of the 3-week forecast period;
 - (ii) A permanent unfavourable variance of approximately \$1.8 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations; and
 - (iii) A favourable timing variance of \$23.1 million due to cash collateral not being posted during the 3-week forecast period;
 - (c) The permanent favourable variance of approximately \$1.2 million for Commissions is primarily due to normal course fluctuations related to customer signups and associated commissions;

- (d) The permanent favourable variance of approximately \$2.8 million in respect of Selling and Other Costs is primarily due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors; and
- (e) The unfavourable variance of \$1.2 million in respect of Professional Fees due to higher than forecast payment of professional fee invoices during the current 3-week forecast period primarily resulting from increased services rendered by professionals with respect to the continued development and negotiation of the Plan.

Reporting Pursuant to the DIP Term Sheet

- 32. The variances shown and described herein compare the March Cash Flow Forecast, as appended to the Sixth Report, with the actual performance of the Just Energy Entities over the 3-week period noted.
- 33. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Reports**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance reports for the four-week period ended February 5, 2022 and March 5, 2022. All variances reported were within the permitted variances.
- 34. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the “**DIP Cash Flow Forecasts**”). The Just Energy Entities provided the required DIP Cash Flow Forecasts, which were approved by the DIP Lenders, for the 13-week periods beginning February 6, 2022 and March 6, 2022.
- 35. As the DIP Variance Reports utilize updated underlying cash flow forecasts vis-à-vis the March Cash Flow Forecast for the same period, the DIP Variance Reports differed

from the variance analysis above that compares actual results to the March Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.

36. Since the Sixth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
- (a) Delivery of a Priority Supplier Payables Certificate monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly; and
 - (e) Delivery of a Marked to Market Calculation monthly.

CASH FLOW FORECAST FOR THE 6-WEEK PERIOD ENDING APRIL 30, 2022

37. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 6-week period ending April 30, 2022 (the “**April Cash Flow Forecast**”), which encompasses the requested extension of the Stay Period to April 22, 2022. The April Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized below:

<i>(CAD\$ in millions)</i>	6-Week Period Ending April 30, 2022
Forecast Week	Total
RECEIPTS	
Sales Receipts	\$342.1
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$342.1
DISBURSEMENTS	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$350.0)
Payroll	(16.0)
Taxes	(17.6)
Commissions	(13.5)
Selling and Other Costs	(19.0)
<i>Total Operating Disbursements</i>	(\$416.0)
OPERATING CASH FLOWS	(\$73.9)
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$-
Interest Expense & Fees	(8.3)
<i>Restructuring Disbursements</i>	
Professional Fees	(10.4)
NET CASH FLOWS	(\$92.6)
CASH	
Beginning Balance	\$216.8
Net Cash Inflows / (Outflows)	(92.6)
Other (FX)	-
ENDING CASH	\$124.2

38. The April Cash Flow Forecast indicates that during the 6-week period ending April 30, 2022, the Just Energy Entities will have operating cash outflows of approximately \$73.9 million with total receipts of approximately \$342.1 million and total operating disbursements of approximately \$416.0 million, before interest expense and fees of approximately \$8.3 million and professional fees of approximately \$10.4 million, such that total net cash outflows are forecast to be approximately \$92.6 million.
39. Generally, the underlying assumptions and methodology utilized in the March Cash Flow Forecast have remained the same for this April Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending April 2, 2022 to the week ending April 30, 2022;
 - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the April Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
40. The April Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to April 22, 2022.

STAY EXTENSION

41. The Stay Period will expire on March 25, 2022, and the Applicants are seeking an extension to the Stay Period up to and including April 22, 2022.

42. The Monitor supports extending the Stay Period to April 22, 2022 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to finalize the Plan in an effort to achieve a going concern solution in consultation with the Monitor and key stakeholders, including potentially seeking an order from the Court approving a creditors' meeting to vote on same;
 - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with the flexibility and time required to develop and commence steps to implement a successful restructuring;
 - (c) as indicated by the April Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
 - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
 - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the Filing Date.

APPROVAL OF THE ACTIVITIES OF THE MONITOR

43. The Proposed Order also seeks approval of this Seventh Report and the actions, conduct, and activities of the Monitor since the date of the Sixth Report.
44. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Sixth Report have been carried out in good faith and in accordance with the provisions of the orders issued in these CCAA Proceedings and should therefore be approved.

CONCLUSION

45. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
46. Accordingly, the Monitor respectfully supports the requested extension of the Stay Period in the Proposed Order and recommends that such Order be granted.

The Monitor respectfully submits to the Court this Seventh Report dated this 22nd day of March, 2022.

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



Per: _____
Paul Bishop, Senior Managing Director

Appendix “A”**CASH FLOW FORECAST FOR THE 6-WEEK PERIOD ENDING APRIL 30, 2022**

Weeks Ending (Saturday)		3/26/22 Forecast	4/2/22 Forecast	4/9/22 Forecast	4/16/22 Forecast	4/23/22 Forecast	4/30/22 Forecast	6-Week
Forecast Week		Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Total
RECEIPTS								
Sales Receipts	[1]	\$77.6	\$56.8	\$48.8	\$46.7	\$55.0	\$57.3	\$342.1
Miscellaneous Receipts	[2]	-	-	-	-	-	-	-
Total Receipts		\$77.6	\$56.8	\$48.8	\$46.7	\$55.0	\$57.3	\$342.1
DISBURSEMENTS								
<i>Operating Disbursements</i>								
Energy and Delivery Costs	[3]	(\$124.9)	(\$52.8)	(\$8.2)	(\$11.0)	(\$106.4)	(\$46.6)	(\$350.0)
Payroll	[4]	(6.3)	-	(3.7)	-	(3.8)	(2.2)	(16.0)
Taxes	[5]	(6.3)	-	-	(0.0)	(5.7)	(5.6)	(17.6)
Commissions	[6]	(4.3)	(0.9)	(1.5)	(0.9)	(2.6)	(3.4)	(13.5)
Selling and Other Costs	[7]	(1.1)	(4.4)	(2.4)	(5.6)	(3.0)	(2.4)	(19.0)
Total Operating Disbursements		(\$143.0)	(\$58.1)	(\$15.8)	(\$17.5)	(\$121.4)	(\$60.2)	(\$416.0)
OPERATING CASH FLOWS		(\$65.4)	(\$1.3)	\$33.0	\$29.1	(\$66.4)	(\$2.8)	(\$73.9)
<i>Financing Disbursements</i>								
Credit Facility - Borrowings / (Repayments)	[8]	\$-	\$-	\$-	\$-	\$-	\$-	\$-
Interest Expense & Fees	[9]	-	(8.3)	-	-	-	-	(8.3)
<i>Restructuring Disbursements</i>								
Professional Fees	[10]	(1.2)	(3.1)	(1.6)	(0.7)	(2.5)	(1.1)	(10.4)
NET CASH FLOWS		(\$66.7)	(\$12.8)	\$31.3	\$28.4	(\$69.0)	(\$3.9)	(\$92.6)
CASH								
Beginning Balance		\$216.8	\$150.1	\$137.3	\$168.7	\$197.1	\$128.1	\$216.8
Net Cash Inflows / (Outflows)		(66.7)	(12.8)	31.3	28.4	(69.0)	(3.9)	(92.6)
Other (FX)		-	-	-	-	-	-	-
ENDING CASH		\$150.1	\$137.3	\$168.7	\$197.1	\$128.1	\$124.2	\$124.2
BORROWING SUMMARY								
DIP Facility Credit Limit		\$158.8	\$158.8	\$158.8	\$158.8	\$158.8	\$158.8	\$158.8
DIP Draws		-	-	-	-	-	-	-
DIP Principal Outstanding		158.8	158.8	158.8	158.8	158.8	158.8	158.8
DIP Availability		\$-	\$-	\$-	\$-	\$-	\$-	\$-

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.
2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.
3. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.
4. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of payroll taxes and any payments associated with the Company's bonus programs.
5. Taxes reflect the remittance of sales taxes collected from customers and the Company's corporate income taxes.
6. Commissions include fees paid to customer acquisition contractors and suppliers.
7. Selling and Other Costs include selling, general, and administrative payments.
8. The Credit Facility Borrowings / (Repayments) show borrowings and repayments under the Company's credit facilities.
9. Interest expenses & fees include interest and fees on the Company's credit and LC facilities.
10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, the DIP lenders' professionals, and fees for Lender Support and Certain Commodity Support Agreements.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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

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Lawyers for the Court-appointed Monitor,
FTI Consulting Canada Inc.

*THIS IS EXHIBIT "W" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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 "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order 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.

2. I make this affidavit in support of the Applicants’ motion returnable on March 3, 2022, for a short extension of the Stay Period (as defined below) to, and including, March 25, 2022.

EXTENSION TO THE STAY PERIOD

3. The Initial Order granted a Stay Period until and including March 19, 2021. The Stay Period has subsequently been extended to June 4, 2021, September 30, 2021, December 17, 2021, February 17, 2022 and, most recently, March 4, 2022.

4. In support of the Just Energy Entities’ previous motion for a brief extension to the Stay Period heard by the Court on February 9, 2022, I swore an Affidavit that included a comprehensive discussion regarding the Just Energy Entities’ ongoing efforts to reach consensus with key stakeholders¹ holding more than \$1 billion CAD in funded debt regarding the terms and structure of a restructuring plan to facilitate the Just Energy Entities’ emergence from the current CCAA and Chapter 15 proceedings. A copy of my previous Affidavit, sworn February 2, 2022, excluding exhibits, is attached hereto as **Exhibit “A”**.

¹ Such key stakeholders include: (a) the four funds comprising the DIP Lenders in these CCAA proceedings (the “**DIP Lenders**”); (b) significant lenders under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (the “**Term Loan Lenders**”); (c) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S., dated as of September 28, 2020 (the “**Credit Facility Lenders**”); (d) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC as significant Commodity Suppliers to, and secured creditors of, the Just Energy Entities (collectively, “**Shell**”); and (e) CBHT Energy I LLC in its capacity as assignee of all secured pre-filing, claims previously held by BP.

5. Since the Stay Period was last extended on February 9, 2022, the Just Energy Entities, in consultation with the Monitor, have continued to work hard to finalize their proposed restructuring plan and had anticipated applying for an Order on March 3, 2022, among other things, authorizing them to file a plan of compromise or arrangement (the “**Plan**”) for consideration by their creditors, and to call, hold and conduct meetings of creditors to consider and vote on resolutions to approve the Plan (the “**Meeting Order**”). However, because of the size and complexity of the Just Energy Entities’ business, and the complexity and time-consuming nature of multi-party negotiations, discussions are at a crucial stage and remain ongoing. The Just Energy Entities are accordingly seeking a short, three-week extension of the Stay Period up to and including March 25, 2022.

6. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings and in working to develop a Plan to present to their creditors. 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 an additional short period of time to seek to: (a) conclude their discussions with key stakeholders regarding the terms of a proposed Plan, (b) finalize the Plan, and (c) file a further motion with this Honourable Court for the Meeting Order.

7. I understand that prior to the hearing of this motion the Monitor will file a report (the “**Monitor’s Sixth 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 March 25, 2022. I further understand that the Monitor's Sixth Report will recommend that the Stay Period be extended.

SWORN BEFORE ME over video teleconference this 1st day of March, 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.

Tiffany Sun

Commissioner for Taking Affidavits

Michael Carter

Michael Carter

Miao Sun, a Commissioner, etc.,
Province of Ontario, while a
Student-at-Law. Expires March 6,
2023.

*THIS IS EXHIBIT "X" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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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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 "**Just Energy Group**" or the "**Applicants**"), including the partnerships listed on Schedule "A" of the Initial Order 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.

2. I make this affidavit in support of the Applicants' motion returnable on March 24, 2022, for an extension of the Stay Period (as defined below) to, and including, April 22, 2022.

EXTENSION TO THE STAY PERIOD

3. The Initial Order granted a Stay Period until and including March 19, 2021 (the "**Stay Period**"). The Stay Period has subsequently been extended to June 4, 2021, September 30, 2021, December 17, 2021, February 17, 2022, March 4, 2022 and, most recently on March 3, 2022, to March 25, 2022.

4. In support of the Just Energy Entities' previous motions for brief extensions to the Stay Period heard by the Court on February 9 and March 3, 2022, I swore Affidavits that included a comprehensive discussion regarding the Just Energy Entities' ongoing efforts to reach consensus with key stakeholders¹ holding more than \$1 billion CAD in funded debt regarding the terms and structure of a restructuring plan to facilitate the Just Energy Entities' emergence from the current CCAA and Chapter 15 proceedings. Copies of my previous Affidavits, sworn February 2 and March 1, 2022, excluding exhibits, are attached hereto as **Exhibits "A" and "B"**.

¹ Such key stakeholders include: (a) the four funds comprising the DIP Lenders in these CCAA proceedings (the "**DIP Lenders**") under the CCAA Interim Debtor-in-Possession Financing Term Sheet dated as of March 9, 2021 (as amended, the "**DIP Term Sheet**"); (b) significant lenders under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (the "**Term Loan Lenders**"); (c) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S., dated as of September 28, 2020 (the "**Credit Facility Lenders**"); (d) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC as significant Commodity Suppliers to, and secured creditors of, the Just Energy Entities (collectively, "**Shell**"); and (e) CBHT Energy I LLC in its capacity as assignee of all secured pre-filing claims previously held by BP.

5. Since the Stay Period was last extended on March 3, 2022, the Just Energy Entities, in consultation with the Monitor, have continued to work hard to finalize their proposed restructuring plan and had anticipated applying for an Order on or before March 25, 2022, among other things, authorizing them to file a plan of compromise or arrangement (the “**Plan**”) for consideration by their creditors, and to call, hold and conduct meetings of creditors to consider and vote on resolutions to approve the Plan (the “**Meeting Order**”). However, at this time, despite intensive efforts and continued progress on the restructuring discussions, no Plan has yet been finalized to allow the Just Entities to file a motion to seek a Meeting Order.

6. The Just Energy Entities are accordingly seeking an additional short extension of the Stay Period up to and including April 22, 2022. The Just Energy Entities currently intend to seek a Meeting Order authorizing them to file a Plan during this proposed extended Stay Period. If, notwithstanding the Just Energy Entities’ best efforts, they are unable to file a motion seeking a Meeting Order prior to April 22, 2022, the Just Energy Entities intend to seek direction from this Honourable Court regarding their ongoing restructuring efforts and these CCAA proceedings.

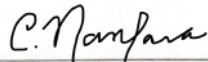
7. In order to accommodate the longer than anticipated timelines for finalization of the Plan and advancement of the Just Energy Entities’ restructuring efforts, the DIP Lenders have agreed to amend the milestone dates under the DIP Term Sheet as follows:

- Delivery of Recapitalization Term Sheet: extended to March 24, 2022;
- Meeting Order: extended to March 31, 2022;
- Mailing of Meeting Materials: extended to April 7, 2022;
- Meeting Order Recognition in Chapter 15 proceedings: extended to April 26, 2022;
- Creditors’ Meeting: extended to May 11, 2022;
- Sanction Order: extended to May 18, 2022; and

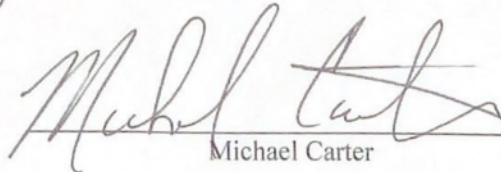
- 4 -

- Sanction Order Recognition in Chapter 15 proceedings: extended to June 2, 2022.
8. The Just Energy Entities will seek further extensions to the milestone dates, as necessary, to accommodate the status of negotiations leading up to April 22, 2022.
9. The Just Energy Entities have acted and continue to act in good faith and with due diligence in these CCAA proceedings and in working to develop a Plan to present to their creditors. 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 an additional short period of time to seek to: (a) conclude their discussions with key stakeholders regarding the terms of a proposed Plan, (b) finalize the Plan, and (c) file a further motion with this Honourable Court for the Meeting Order.
10. I understand that prior to the hearing of this motion the Monitor will file a report (the "Monitor's Seventh 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 April 22, 2022. I further understand that the Monitor's Seventh Report will recommend that the Stay Period be extended.

SWORN BEFORE ME over video
teleconference this 21st day of March, 2022
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the Town of Flower Mound, in the
State of Texas while the Commissioner was
located in the City Toronto, in the Province of
Ontario.



Commissioner for Taking Affidavits
Chloe Nanfara (LSO No. 79715G)



Michael Carter

*THIS IS EXHIBIT "Y" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell". The signature is written in a cursive style with a small square mark at the end of the last letter.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

April 7, 2022

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APPENDICES

Appendix “A” April 5, 2022 Ruling of Justice Dennis O’Connor

**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**”)

EIGHTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the

protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and most recently on May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative, commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. By order dated February 9, 2022, the Court denied certain relief, with reasons to follow, requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their

capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”) and Trevor Jordet, in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons for the dismissal are set out in the written reasons dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement on February 24, 2022.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O’Connor as Claims Officer with respect to the adjudication of the Donin/Jordet Actions.
8. On March 24, 2022, the Court granted an Order extending the Stay Period until April 22, 2022.
9. All references to monetary amounts in this Eighth Report of the Monitor (the “**Eighth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
10. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
11. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

12. In the Monitor’s Seventh Report to the Court dated March 22, 2022 (the “**Seventh Report**”), the Monitor advised the Court that it would provide an update to the Court on April 7, 2022 in respect of the status of the Applicants’ recapitalization plan (“**Plan**”) discussions.

13. The purpose of this Eighth Report is to provide information to the Court with respect to the following:
- (a) the status of the Plan negotiations and future relief to be sought by the Applicants;
 - (b) the Monitor's activities since the Seventh Report;
 - (c) the status of the claims adjudication process for the Donin/Jordet Actions;
 - (d) the status of the ERCOT Litigation (as defined below); and
 - (e) the Monitor's views in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

14. In preparing this Eighth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities' books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the "**Information**").
15. Except as otherwise described in this Eighth Report:
- (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Eighth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
16. The Monitor has prepared this Eighth Report to provide information to the Court in connection with the relief requested by the Applicants. This Eighth Report should not be relied on for any other purpose.

MONITOR'S ACTIVITIES SINCE THE SEVENTH REPORT

17. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Seventh Report have included the following:
- (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular and frequent discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives, including with respect to the Plan, the Claims Procedure, communications with stakeholders and business operations;
 - (c) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, and issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order) and where applicable, notifying creditors of accepted Claims;
 - (d) monitoring the cash receipts and disbursements of the Just Energy Entities;
 - (e) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts and presentations; and
 - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
 - (f) attending meetings of the Board of Directors of Just Energy, and various committees thereof;

- (g) responding to creditor and other stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (h) attending a hearing before the Honourable Justice O'Connor regarding certain procedural matters in connection with the adjudication of the Donin/Jordet Actions, as further described below;
- (i) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (j) attending a hearing before the U.S. Court with respect to the ERCOT Litigation, as defined and described below;
- (k) maintaining the service list for the CCAA Proceedings with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (l) preparing this Eighth Report.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

- 18. The Plan is intended to facilitate the Just Entity Entities' emergence from the CCAA Proceedings while preserving the going concern value of the business, maintaining customer relationships, and preserving employment and critical vendor and regulator relationships – all for the benefit of the Just Energy Entities' stakeholders.
- 19. Although regular discussions and negotiations are ongoing amongst the Just Energy Entities and principal stakeholders, the Plan has not yet been finalized.
- 20. In its Fifth Report to the Court dated February 4, 2022, the Monitor noted that the Just Energy Entities intended to bring a motion before the Court on March 3, 2022 to seek the authority to file the Plan. Approximately one month has transpired since the time the Plan was intended to be filed, and it is clear that more time will be required to conclude Plan discussions and negotiations.

21. The Monitor is concerned about the delay in finalizing the Plan and has strongly encouraged the Just Energy Entities and principal stakeholders to work together to resolve quickly all remaining issues in order to ensure the Just Energy Entities' timely emergence from these CCAA proceedings.
22. Notwithstanding the foregoing concerns, the Monitor is of the view that the Just Energy Entities and principal stakeholders continue to work in good faith to develop a Plan.
23. The Monitor understands that the Just Energy Entities will seek an extension to the Stay Period before the Court on April 21, 2022, prior to the expiration of the current Stay Period. The Monitor will comment on the requested stay extension in a further Report to the Court.

DONIN/JORDET ACTIONS CLAIMS' ADJUDICATION

24. As mentioned above, pursuant to an Order of the Court dated March 3, 2022, the Honourable Justice O'Connor was appointed as Claims Officer for the purpose of adjudicating the Donin/Jordet Actions in accordance with the Claims Procedure Order.
25. There have been two attendances before Justice O'Connor since the date of his appointment to decide certain preliminary and procedural matters. Topics of discussion at the first hearing primarily pertained to logistics and scheduling matters, identification and overview of key issues, and the roles of the parties involved in the arbitration. At the second hearing, the procedural matter argued pertained to the claimants' request for Justice O'Connor to appoint two additional claims officers from the U.S. Judicial Arbitration and Mediation Services. Justice O'Connor dismissed the claimants' requested relief pursuant to written reasons dated April 5, 2022 (the "**April 5 Ruling**"). The April 5 Ruling is attached herewith as **Appendix "A"**.

ERCOT PROCEEDING

26. On November 12, 2021, the Just Energy Entities commenced litigation against the Electric Reliability Council of Texas ("**ERCOT**") and the Public Utility Commission of Texas (the "**PUCT**") in the U.S. Court (the "**ERCOT Litigation**"). The claims against the PUCT were dismissed by the U.S. Court. The Just Energy Entities are

seeking to recover payments made by various Just Energy Entities to ERCOT for certain invoices in February 2021 relating to the unprecedented Texas winter storm.

27. The Monitor intends to be actively involved in supporting the ERCOT Litigation. The Monitor is of the view that the potential recoveries that might be available to the Just Energy Entities justifies the ERCOT Litigation and the Monitor's involvement therewith.
28. Certain procedural issues relating to the cross-border nature of these CCAA Proceedings and the ERCOT Litigation will require the Just Energy Entities to request certain clarification and relief from this Court, which the Monitor intends to comment on in a further Report to this Court.

CONCLUSION

29. Notwithstanding the Monitor's concerns noted above, the Monitor supports the continuation of Plan discussions and negotiations during the remainder of the Stay Period currently approved by this Honourable Court.

The Monitor respectfully submits to the Court this Eighth Report dated this 7th day of April, 2022.

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



Per: _____
Paul Bishop, Senior Managing Director

Appendix "A"

APRIL 5, 2022 RULING

[attached]

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED, and
WITH RESPECT TO JUST ENERGY GROUP INC. et al.
and IN THE MATTER OF THE CLAIMS OF FIRA DONIN AND
TREVOR JORDET

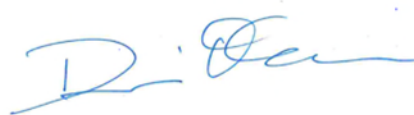
RULING

1. The US Class Action Claimants (Donin and Jordet) request that I appoint two additional claims officers from the US-based Judicial Arbitration and Mediation Services (“JAMS”) to adjudicate these claims. They propose that each party appoint one of the additional adjudicators and that I would be Chair of the panel.
2. The Claimants argue that the appointment of two US adjudicators, who would be well-versed in US energy supply contract law and class actions claim procedures in the USA, could facilitate a more expeditious, efficient and effective adjudication.
3. The Claimants raise a number of arguments in support of their request. They submit that the additional adjudicators would be familiar with the procedural and substantive law that applies to the US class actions and that their expertise would enable me to make a more informed analysis of the opposing positions. They also argue that the additional adjudicators would be familiar with the US energy deregulation landscape and will have previously been involved with issues similar to those in the present claims.
4. In addition, the Claimants submit that the addition of the two adjudicators would assist in expediting the claims process and that the additional costs would be minimal in the context of this CCAA proceeding.
5. Just Energy opposes this request. However, it does not do so on the basis that I lack jurisdiction to grant it. Just Energy argues that if accede to the request, the parties will seek an order from Justice McEwen to give effect to any such order.
6. In my view, the request is premature. The parties appear to disagree on the scope, complexity and the applicable jurisdictions applicable to the claims asserted in the US class actions. As a result of motions to dismiss the class actions, Judges Kuntz (“Donin claim”) and Skretny (“Jordet claim”) dismissed some of the claims asserted. The parties disagree about the scope and complexity of the remaining claims. Just Energy argues that the remaining claims are relatively straightforward claims for breach of contract and that the issues remaining to be determined pursuant to US law will be discrete and manageable without the need of the additional adjudicators.
7. On the other hand, the Claimants argue that Just Energy takes an unduly narrow view of what will have to be addressed and that when adjudicating these claims, I would benefit from an understanding of the US Federal Rules of Civil Procedure authorizing class actions (notably Rule 23), the court’s fiduciary role in effecting a fair resolution on behalf of class members and the US law relating to the scope of pre-class certification discovery

proceedings. They also submit it will be necessary to understand the substantive state law in eleven different US states.

8. In my view, it would be premature to appoint two US adjudicators without first ascertaining what in fact the issues in these claims are and what disputes there are about the applicable US procedural and substantive law.
9. In addition, the Claimants have not satisfied me that alternatives to appointing US adjudicators would not be more effective and efficient. The most obvious alternative, it seems to me, is the use of expert evidence with respect to those areas of the US law about which the parties disagree. I will be in a better position to fashion a process to address US legal issues and to determine whether it will be best to appoint two US adjudicators when I have a better understanding of the US legal issues, if any, that are in dispute.
10. Finally I note that on February 22, 2022, Justice McEwen dismissed a similar request to the one now made by the Claimants. The Claimants have sought leave to appeal Justice McEwen's ruling. While Just Energy does not object to my jurisdiction to deal with the present request, I nonetheless agree with the concerns set out in Justice McEwen's ruling as the basis for his dismissal of the request at this stage of the CCAA process.
11. In the result, I dismiss the Claimants request to appoint additional adjudicators without prejudicing their right to renew the request at a later stage.

Dated at Toronto this 5th day of April 2022.



Dennis O'Connor

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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

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Lawyers for the Court-appointed Monitor,
FTI Consulting Canada Inc.

*THIS IS EXHIBIT "Z" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

ONTARIO
SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

Applicants

AFFIDAVIT OF JAMES C. TECCE

I, James Tecce, of the City of New York, in the State of New York, MAKE OATH AND SAY:

1. I am an attorney at Quinn Emanuel Urquhart & Sullivan LLP, U.S. counsel to Just Energy Texas LP (“**JE Texas**”), Fulcrum Retail Energy LLC (“**Fulcrum**”), Hudson Energy Services LLC (“**Hudson**”), and Just Energy Group, Inc. (“**Just Energy**”), the plaintiffs in the Adversary Proceeding (defined below) (collectively, the “**Plaintiffs**”).

2. I affirm this affidavit in support of a motion by 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**”), seeking an order (a) authorizing the Foreign Representative and other Just Energy Entities, as the case may be, to pursue the Section 36.1 Claims (as defined below) in the Adversary Proceeding (as defined below), including, *nunc pro tunc*; (b) authorizing and directing the Monitor to take whatever actions or steps it deems advisable to assist and supervise the Just Energy Entities with respect to the Adversary Proceeding; and (c) in the alternative, authorizing the Monitor to jointly serve as foreign representative in the Chapter 15 Cases (as defined below) in order to allow the Monitor, the Foreign Representative and other Just Energy Entities, as the case may be, to jointly prosecute the Section 36.1 Claims in the Adversary Proceeding, *nunc pro tunc*.

Background

3. 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 (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”). The Initial Order extended the benefits of its protections and authorizations to the partnerships listed on Schedule “A” (together with the Applicants, the “**Just Energy Entities**”).

4. The CCAA Court granted an Amended and Restated Initial Order on March 19, 2021, and a Second Amended and Restated Initial Order on May 26, 2021. A copy of the Second Amended and Restated Initial Order is attached as **Exhibit “A”** hereto.

5. On March 9, 2021, shortly after obtaining the Initial Order, Just Energy, in its capacity as Foreign Representative, filed a voluntary Chapter 15 petition under the U.S. Bankruptcy Code (the “**Bankruptcy Code**”) for each of the Just Energy Entities (the “**Chapter 15 Cases**”) in the United

States Bankruptcy Court for the Southern District of Texas (the “**U.S. Bankruptcy Court**”). That same day, the U.S. Bankruptcy Court entered an Order (the “**Provisional Relief Order**”) granting the Just Energy Entities certain forms of provisional relief pursuant to section 1519 of the Bankruptcy Code. A copy of the Provisional Relief Order is attached (without exhibits) as **Exhibit “B”** hereto.

6. On April 2, 2021, the U.S. Bankruptcy Court granted an Order (the “**Recognition Order**”) under Chapter 15 of the Bankruptcy Code which, among other things, (i) recognized that the Debtors (as defined therein) had their “center of main interests” in Canada; (ii) granted the ARIIO full force and effect on a final basis with respect to the Just Energy Entities’ property located within the United States; and (iii) granted recognition of the Foreign Representative as the “foreign representative”, as defined in section 101(24) of the Bankruptcy Code, with respect to the CCAA proceeding, including to all of the relief set forth in sections 1507, 1519, 1520, and 1521(a)(4) and (5) of the Bankruptcy Code, without limitation. A copy of the Final Recognition Order is attached as **Exhibit “C”** hereto.

The Adversary Proceeding

7. On November 12, 2021, the Plaintiffs commenced an adversary proceeding in the U.S. Bankruptcy Court bearing adversary proceeding no. 21-4399 (MI) (the “**Adversary Proceeding**”) against the Texas Public Utility Commission (the “**PUCT**”) and the Electric Reliability Council of Texas (“**ERCOT**”) by filing a complaint (the “**Initial Complaint**”). The Initial Complaint contained five counts. A copy of the Initial Complaint is attached as **Exhibit “D”** hereto.

8. The Adversary Proceeding stems directly from the actions taken by ERCOT and the PUCT during the winter storm and seeks, among other things, to avoid obligations incurred to, and claw back payments made to ERCOT pursuant to section 36.1 of the CCAA (the “**Section 36.1**”).

Claims”), which incorporates by reference sections 38 and 95-101 of the Bankruptcy and Insolvency Act, R.S.C. 985, c. B-3 (“**BIA**”).

9. In January 2022, both ERCOT and the PUCT moved to dismiss the Initial Complaint (the “**Initial Dismissal Motions**”).

10. The Initial Dismissal Motions were argued before the Honourable Judge Marvin Isgur of the U.S. Bankruptcy Court on February 2, 2022.

11. At the conclusion of the hearing, Judge Isgur made various rulings, including dismissing the PUCT as a defendant in the Adversary Proceeding and directing the Plaintiffs to file an amended complaint relating to certain of the counts raised in the Initial Complaint. A copy of the transcript of the February 2, 2022 hearing is attached as **Exhibit “E”** hereto.

12. On February 11, 2022, the Plaintiffs filed an amended complaint (the “**First Amended Complaint**”). A copy of the First Amended Complaint is attached as **Exhibit “F”** hereto.

13. The First Amended Complaint contains six counts (compared to five counts in the Initial Complaint), including four separate “sub-Counts” that relate to the CCAA. As pled in the First Amended Complaint:

- (a) Count 1: seeks an order declaring that the Invoice Obligations (as defined therein) are void in their full amount (approximately USD\$336 million) on the basis that they are a preference, contrary to section 95 of the BIA (incorporated into the CCAA pursuant to section 36.1);
- (b) Count 2: seeks an order declaring the pre-petition Transfers (as defined therein) are void on the basis that they are a preference, contrary to section 95 of the BIA

(incorporated into the CCAA pursuant to section 36.1) and should be returned in an amount no less than approximately USD\$81 million;

- (c) Count 3: seeks an order declaring the pre-petition Transfers are void on the basis that they are a transfer at undervalue, contrary to section 96 of the BIA (incorporated into the CCAA pursuant to section 36.1) and should be returned in an amount no less than approximately USD\$81 million; and
- (d) Count 4: seeks an order directing ERCOT to return the Transfers made by Just Energy, pursuant to section 98(1) of the BIA (incorporated into the CCAA pursuant to section 36.1), either (i) in the amount of not less than approximately USD\$274 million or, (ii) alternatively, in the amount of not less than approximately USD\$220 million;

14. On March 14, 2022, the Adversary Proceeding was reassigned from the Honourable Judge Marvin Isgur to the Honourable Judge David R. Jones of the U.S. Bankruptcy Court.

15. On March 17, 2022, ERCOT filed a motion to dismiss (the “**Second Dismissal Motion**”) the First Amended Complaint on the basis, among other things, that the Foreign Representative does not have standing to advance the Section 36.1 Claims. A copy of the Second Dismissal Motion is attached (without exhibits) as **Exhibit “G”** hereto.

16. On March 24, 2022, the Plaintiffs filed an Objection to the Second Dismissal Motion (the “**Objection**”) arguing, among other things, that the proper parties were present and that all counts were properly pled. A copy of the Objection (without exhibits) is attached as **Exhibit “H”** hereto.

17. In support of the Objection, I submitted a declaration which attached a number of documents, including (i) the Declaration of Paul Bishop (the “**Monitor’s Declaration**”) and (ii)

the Declaration of Kevin P. McElcheran (the “**McElcheran Declaration**”). Copies of the Monitor’s Declaration and the McElcheran Declaration are attached hereto as **Exhibits “I” and “J”**, respectively.

18. On March 31, 2022, ERCOT filed a Reply in support of the Second Dismissal Motion, a copy of which is attached as **Exhibit “K”** hereto.

19. Argument on the Second Dismissal Motion was commenced before Judge Jones on April 4, 2022. At the hearing, Judge Jones requested that the Foreign Representative seek direction from the CCAA Court with respect to the question of who is the proper party to advance the Section 36.1 Claims. A copy of the transcript of the April 4, 2022 hearing is attached as **Exhibit “L”** hereto.

20. On April 6, 2022, the U.S. Bankruptcy Court entered an Order (the “**April 6 Order**”) stating that “[t]he Adversary Proceeding is abated and all deadlines in the Adversary Proceeding are stayed pending further Order of the Court so that the parties can seek direction from the Canadian Court with respect to the standing to prosecute the claims in the Adversary Proceeding”. A copy of the April 6 Order is attached as **Exhibit “M”** hereto.

SWORN BEFORE ME over video teleconference this 14th day of April, 2022 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits



James Tecce

*THIS IS EXHIBIT "AA" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Rosenfeld", enclosed within a thin black rectangular border. The signature is written in a cursive style with a small star-like mark at the end.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

April 18, 2022

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Appendix “A” Cash Flow Forecast for the 6-week period ending June 4, 2022

**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**”)

NINTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the

protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the CCAA Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the CCAA Court from time to time.
5. On September 15, 2021, the CCAA Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. By order dated February 9, 2022, the CCAA Court denied certain relief, with reasons to follow, requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan

in their capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”), and Trevor Jordet in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The CCAA Court’s reasons for the dismissal are set out in the written reasons of Justice McEwen dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement to the Court of Appeal for Ontario on February 24, 2022.

7. On March 3, 2022, the CCAA Court granted an Order extending the Stay Period until March 25, 2022, and appointing the Honourable Justice Dennis O’Connor as Claims Officer (the “**Claims Officer**”) with respect to the adjudication of the Donin/Jordet Actions.
8. On March 24, 2022, the CCAA Court granted an Order extending the Stay Period until April 22, 2022 to provide additional time for the Just Energy Entities to formulate a recapitalization plan.
9. All references to monetary amounts in this Ninth Report of the Monitor (the “**Ninth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Second A&R Initial Order.
10. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
11. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy>.

PURPOSE

12. The purpose of this Ninth Report is to provide information to the CCAA Court with respect to the following:
- (a) the Monitor’s activities since the Monitor’s Eighth Report to the CCAA Court dated April 7, 2022 (the “**Eighth Report**”);
 - (b) the status of the development of a recapitalization plan (the “**Plan**”) and related relief to be sought by the Applicants at a future date;
 - (c) the relief sought by the Applicants in their proposed Order (the “**Foreign Representative Order**”) including the following relief:
 - (i) authorizing the Foreign Representative and other Just Energy Entities, as the case may be, to pursue the section 36.1 Claims (as defined below) in the U.S. Adversary Proceeding (as defined below), *nunc pro tunc*;
 - (ii) authorizing and directing the Monitor 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 U.S. Adversary Proceeding;
 - (iii) in the alternative, authorizing the Monitor to jointly serve as foreign representative in the Chapter 15 Proceedings in order to allow the Monitor, the Foreign Representative and other Just Energy Entities, as the case may be, to jointly prosecute the section 36.1 Claims in the U.S. Adversary Proceeding, *nunc pro tunc*;
 - (d) the relief sought by the Applicants in their proposed Order (the “**Stay Extension Order**”) including the following relief:
 - (i) extending the Stay Period to and including May 26, 2022;
 - (ii) approving the Eighth Report, this Ninth Report and the actions, conduct and activities of the Monitor described in such reports; and
 - (e) the Just Energy Entities’ actual cash receipts and disbursements for the 3-week period ending April 9, 2022, a comparison to the cash flow forecast attached as

Appendix “A” to the Monitor’s Seventh Report to the Court dated March 22, 2022, along with an updated cash flow forecast for the period ending June 4, 2022.

TERMS OF REFERENCE AND DISCLAIMER

13. In preparing this Ninth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).
14. Except as otherwise described in this Ninth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Ninth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
15. The Monitor has prepared this Ninth Report to provide information to the CCAA Court in connection with the relief requested by the Applicants. This Ninth Report should not be relied on for any other purpose.

MONITOR’S ACTIVITIES SINCE THE EIGHTH REPORT

16. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Eighth Report have included the following:
 - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;

- (b) participating in regular and frequent discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities' restructuring initiatives including with respect to the Plan, the Claims Procedure, communications with stakeholders and business operations;
- (c) participating in discussions among the Just Energy Entities and the DIP Lenders and their respective legal counsel and other advisors regarding, among other things, the Just Energy Entities' restructuring initiatives and the Plan;
- (d) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order), and notifying creditors of accepted Claims where applicable;
- (e) monitoring the cash receipts and disbursements of the Just Energy Entities;
- (f) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts, analysis, and presentations; and
 - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (g) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (h) attending the U.S. Adversary Proceeding hearings;
- (i) responding to stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;

- (j) observing the developments and steps taken by the parties to the adjudication of the Donin/Jordet Actions and providing assistance to the Claims Officer where requested;
- (k) working with stakeholders to find an appropriate path forward with respect to the U.S. Adversary Proceeding;
- (l) maintaining the service list for the CCAA Proceedings (the “**Service List**”) with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor’s Website; and
- (m) preparing this Ninth Report.

UPDATE ON RESTRUCTURING EFFORTS OF THE JUST ENERGY ENTITIES

17. The Plan is intended to facilitate the Just Entity Entities’ emergence from the CCAA Proceedings while preserving the going concern value of the business and critical vendor, customer, employee, and regulator relationships – all for the benefit of the Just Energy Entities’ stakeholders.
18. The Monitor shared its interim view on the status of Plan negotiations in its Eighth Report, which was served on the Service List on April 7, 2022, in accordance with the endorsement of Justice McEwen dated March 24, 2022, and is available on the Monitor’s Website. As stated therein, the Monitor was of the view that the Just Energy Entities were acting in good faith and working collaboratively with their principal stakeholders. The Monitor also expressed its concerns with respect to the delays in developing the Plan and urged the relevant parties to work together expeditiously to resolve the remaining issues.
19. Since the date of the Eighth Report the Just Energy Entities and the principal stakeholders have made considerable progress advancing the Plan. These developments have been underpinned by frequent, recurrent, and productive meetings and discussions among the relevant parties – a number of which the Monitor has participated in or observed directly.

20. Notwithstanding the progress made, the Plan has not yet been finalized and more time is required. The Applicants believe they can resolve the remaining issues preventing finalization of the Plan in a timely manner prior to May 26, 2022. Given the Monitor's understanding and nature of the remaining issues, the Monitor is of the view that the remaining issues are resolvable and will continue to work with the Applicants and encourage all parties to conclude Plan negotiations at the earliest opportunity.

FOREIGN REPRESENTATIVE ORDER

21. On November 12, 2021, the Foreign Representative, together with Just Energy Texas LP, Fulcrum Retail Energy LLC and Hudson Energy Services LLC (collectively, the "**Plaintiffs**") commenced an adversary proceeding against Electric Reliability Council of Texas ("**ERCOT**") and Public Utility Commission of Texas ("**PUCT**") (the "**U.S. Adversary Proceeding**") by filing a complaint (the "**Initial Complaint**") in the U.S. Court.
22. The U.S. Adversary Proceeding relates to the actions taken by ERCOT and PUCT during the Texas winter storm that contributed to the Just Energy Entities seeking creditor protection in these CCAA Proceedings and related Chapter 15 Proceedings. Among other things in the U.S. Adversary Proceeding, the Plaintiffs seek to avoid obligations owing and claw back payments made to ERCOT pursuant to section 36.1 of the CCAA (the "**section 36.1 Claims**"), which incorporates by reference sections 38 and 95-101 of the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3 as amended (the "**BIA**").
23. The Plaintiffs challenge US\$274 million in payments made to ERCOT in the period during and after the Texas winter storm event and allege the following:
- (a) ERCOT artificially set a real-time market price at US\$9,000/MWh for approximately 88 consecutive hours during the winter storm event, which was orders of magnitude greater than the value of the energy supplied and set in violation of Texas law; and
 - (b) alternatively, ERCOT failed to lower the price on February 17, 2021 after ERCOT ceased forcing power outages.

24. ERCOT and PUCT moved to dismiss the Plaintiffs' Initial Complaint, and an initial hearing was held before the U.S. Court on February 2, 2022. The U.S. Court, among other things, dismissed PUCT as a defendant in the U.S. Adversary Proceeding and directed the Plaintiffs to file an amended complaint. The Plaintiffs subsequently filed their amended complaint (the "**Amended Complaint**") on February 11, 2022.
25. ERCOT moved to dismiss the Amended Complaint (the "**Subsequent Dismissal Motion**") on the grounds that, among other things, the Foreign Representative does not have standing to advance the section 36.1 Claims in the U.S. Court.
26. The hearing of the Subsequent Dismissal Motion commenced before Judge David Jones of the U.S. Court on April 4, 2022. At the hearing, Judge Jones requested that the Foreign Representative seek direction from the CCAA Court to determine the proper party to advance the section 36.1 Claims. The hearing was attended by the Monitor and its counsel.
27. At Judge Jones' request, the Applicants now seek an Order from the CCAA Court authorizing and directing the Foreign Representative and other Just Energy Entities, as the case may be, to pursue the section 36.1 Claims in the U.S. Adversary Proceeding, *nunc pro tunc*, with the Monitor's assistance and supervision. In the alternative, the Applicants seek an Order from the CCAA Court authorizing and directing the Monitor to jointly serve as foreign representative in the Chapter 15 Proceedings in order to allow the Monitor, the Foreign Representative and other Just Energy Entities, as the case may be, to jointly prosecute the section 36.1 Claims in the U.S. Adversary Proceeding, *nunc pro tunc*.
28. The Monitor believes the Foreign Representative is best positioned to pursue the section 36.1 Claims in the U.S. Court with the assistance of and under the supervision of the Monitor. In the alternative, the Monitor is prepared to jointly serve as a foreign representative for the purpose of advancing the U.S. Adversary Proceeding. Accordingly, the Monitor is of the view that the relief requested in relation to the pursuit of the section 36.1 Claims is appropriate in the circumstances.

29. The Just Energy Entities have kept the Monitor apprised of each step taken in the U.S. Adversary Proceeding, and representatives of the Monitor have attended all relevant hearings before the U.S. Court. The Monitor, in consultation with its Canadian and U.S. legal counsel, is of the view that the Plaintiffs' claim has merit and that potential recoveries to the Just Energy Entities may result from the U.S. Adversary Proceeding, which justify the steps contemplated herein.

STAY EXTENSION

30. The Stay Period will expire on April 22, 2022, and the Applicants are seeking an extension to the Stay Period up to and including May 26, 2022.
31. The Monitor supports extending the Stay Period to May 26, 2022 for the following reasons:
- (a) during the proposed extension of the Stay Period, the Just Energy Entities will have an opportunity to finalize the Plan in an effort to achieve a going concern solution in consultation with the Monitor and key stakeholders, including seeking an order from the CCAA Court approving a creditors' meeting to vote on same;
 - (b) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with the flexibility and time required to resolve remaining issues and commence steps to implement a successful restructuring;
 - (c) as indicated by the May Cash Flow Forecast (as defined below), the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
 - (d) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
 - (e) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the inception of the CCAA Proceedings.

APPROVAL OF THE ACTIVITIES OF THE MONITOR

32. The Stay Extension Order also seeks approval of the Eighth Report, this Ninth Report, and the actions, conduct, and activities of the Monitor since the date of the Seventh Report.
33. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Seventh Report have been carried out in good faith and in accordance with the provisions of the orders issued in these CCAA Proceedings and should therefore be approved.

RECEIPTS AND DISBURSEMENTS FOR THE 3-WEEK PERIOD ENDED APRIL 9, 2022

34. The Just Energy Entities' actual net cash flow for the 3-week period from March 20, 2022 to April 9, 2022, was approximately \$2.6 million better than the Cash Flow Forecast appended to the Seventh Report (the "**April Cash Flow Forecast**") as summarized below:

<i>(CAD\$ in millions)</i>	Forecast	Actuals	Variance
RECEIPTS			
Sales Receipts	\$183.2	\$165.1	(\$18.1)
Miscellaneous Receipts	-	0.0	0.0
<i>Total Receipts</i>	\$183.2	\$165.1	(\$18.1)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$186.0)	(\$171.3)	\$14.6
Payroll	(10.0)	(8.3)	1.7
Taxes	(6.3)	(6.2)	0.2
Commissions	(6.7)	(5.4)	1.3
Selling and Other Costs	(7.9)	(7.8)	0.2
<i>Total Operating Disbursements</i>	(\$217.0)	(\$199.0)	\$18.0
OPERATING CASH FLOWS	(\$33.8)	(\$33.9)	(\$0.1)
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(8.3)	(5.0)	3.3
<i>Restructuring Disbursements</i>			
Professional Fees	(6.0)	(6.5)	(0.4)
NET CASH FLOWS	(\$48.1)	(\$45.4)	\$2.8
CASH			
Beginning Balance	\$216.8	\$216.8	\$ -
Net Cash Inflows / (Outflows)	(48.1)	(45.4)	2.8
Other (FX)	-	(0.2)	(0.2)
ENDING CASH	\$168.7	\$171.3	\$2.6

35. Explanations for the main variances in actual receipts and disbursements as compared to the April Cash Flow Forecast are as follows:

- (a) The unfavourable variance of approximately \$18.1 million in Sales Receipts is primarily comprised of the following:
 - (i) An unfavourable variance of approximately \$15.2 million due to lower than forecast sales receipts due to timing, which partially offset higher receipts in prior periods, in respect of U.S. residential customers;
 - (ii) An unfavourable variance of approximately \$1.5 million due to lower than forecast sales receipts due to timing, which partially offset higher receipts in prior periods, in respect of U.S. commercial customers; and

- (iii) An unfavourable variance of approximately \$1.4 million primarily due to lower than forecast sales receipts due to timing, which partially offset higher receipts in prior periods, in respect of Canadian residential and commercial customers;
- (b) The favourable variance of approximately \$14.6 million in respect of Energy and Delivery Costs is primarily driven by the following:
 - (i) A favourable timing variance of approximately \$17.9 million due to timing of cash collateral payments and commodity receivables during the 3-week forecast period; and
 - (ii) A permanent unfavourable variance of approximately \$3.3 million due to higher than forecasted transportation and delivery payments due in part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;
- (c) The favorable variance of approximately \$1.7 million for Payroll is primarily due to normal course fluctuations for various payroll tax remittances and sales incentive payments;
- (d) The permanent favourable variance of approximately \$1.3 million for Commissions is primarily due to normal course fluctuations related to customer signups and associated commissions; and
- (e) The favourable timing variance of \$3.3 million in respect of Interest Expense & Fees is due to certain interest and fees owed on the Just Energy Entities' credit facilities being paid after instead of during the 3-week forecast period.

Reporting Pursuant to the DIP Term Sheet

- 36. The variances shown and described herein compare the April Cash Flow Forecast, as appended to the Seventh Report, with the actual performance of the Just Energy Entities over the 3-week period noted.
- 37. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Report(s)**”). The permitted variances to which

certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance report for the four-week period ended April 2, 2022. All variances reported were within the permitted variances.

38. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted variance testing (the "**DIP Cash Flow Forecast(s)**"). The Just Energy Entities provided the required DIP Cash Flow Forecast, which was approved by the DIP Lenders, for the 13-week period beginning April 3, 2022.
39. As the DIP Variance Report utilizes updated underlying cash flow forecasts vis-à-vis the April Cash Flow Forecast for the same period, the DIP Variance Report differed from the variance analysis above that compares actual results to the April Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
40. Since the Seventh Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
 - (a) Delivery of a Priority Supplier Payables Certificate monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly; and
 - (e) Delivery of a Marked to Market Calculation monthly.

CASH FLOW FORECAST FOR THE 6-WEEK PERIOD ENDING JUNE 4, 2022

41. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 8-week period ending June 4, 2022 (the “**May Cash Flow Forecast**”), which encompasses the requested stay extension to May 26, 2022. The May Cash Flow Forecast is attached hereto as **Appendix “A”**, and is summarized below:

<i>(CAD\$ in millions)</i>	8-Week Period Ending June 4, 2022
Forecast Week	Total
RECEIPTS	
Sales Receipts	\$406.6
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$406.6
DISBURSEMENTS	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$349.3)
Payroll	(17.3)
Taxes	(16.6)
Commissions	(15.4)
Selling and Other Costs	(26.4)
<i>Total Operating Disbursements</i>	(\$425.1)
OPERATING CASH FLOWS	(\$18.4)
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(4.9)
<i>Restructuring Disbursements</i>	
Professional Fees	(9.2)
NET CASH FLOWS	(\$32.6)
CASH	
Beginning Balance	\$171.3
Net Cash Inflows / (Outflows)	(32.6)
Other (FX)	-
ENDING CASH	\$138.7

42. Generally, the underlying assumptions and methodology utilized in the April Cash Flow Forecast have remained the same for this May Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending April 30, 2022 to the week ending June 4, 2022;
- (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the May Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.

43. The May Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to May 26, 2022.

CONCLUSION

44. The Monitor is of the view that the relief requested by the Applicants is reasonable and justified in the circumstances.

45. Accordingly, the Monitor respectfully supports the requested relief and recommends that the Foreign Representative Order and the Stay Extension Order be granted.

The Monitor respectfully submits to this Honourable Court this Ninth Report dated this 18th day of April, 2022.

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

Per:



Paul Bishop
Senior Managing Director

Appendix “A”

CASH FLOW FORECAST FOR THE 8-WEEK PERIOD ENDING JUNE 4, 2022

Weeks Ending (Saturday)		4/16/22 Forecast	4/23/22 Forecast	4/30/22 Forecast	5/7/22 Forecast	5/14/22 Forecast	5/21/22 Forecast	5/28/22 Forecast	6/4/22 Forecast	8-Week
Forecast Week		Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8	Total
RECEIPTS										
Sales Receipts	[1]	\$49.9	\$57.6	\$60.2	\$47.5	\$46.1	\$48.5	\$54.5	\$42.3	\$406.6
Miscellaneous Receipts	[2]	-	-	-	-	-	-	-	-	-
Total Receipts		\$49.9	\$57.6	\$60.2	\$47.5	\$46.1	\$48.5	\$54.5	\$42.3	\$406.6
DISBURSEMENTS										
<i>Operating Disbursements</i>										
Energy and Delivery Costs	[3]	(\$12.8)	(\$120.1)	(\$57.1)	\$4.4	(\$5.0)	(\$110.6)	(\$36.5)	(\$11.7)	(\$349.3)
Payroll	[4]	-	(6.6)	-	(3.7)	-	(3.8)	-	(3.3)	(17.3)
Taxes	[5]	(0.1)	(5.6)	(6.6)	-	(0.1)	(4.2)	(0.0)	-	(16.6)
Commissions	[6]	(0.9)	(1.5)	(4.0)	(0.5)	(1.0)	(2.4)	(3.8)	(1.3)	(15.4)
Selling and Other Costs	[7]	(5.6)	(3.0)	(2.4)	(2.4)	(2.4)	(5.6)	(2.4)	(2.4)	(26.4)
Total Operating Disbursements		(\$19.4)	(\$136.7)	(\$70.2)	(\$2.2)	(\$8.5)	(\$126.6)	(\$42.7)	(\$18.8)	(\$425.1)
OPERATING CASH FLOWS		\$30.5	(\$79.1)	(\$10.0)	\$45.3	\$37.5	(\$78.0)	\$11.8	\$23.5	(\$18.4)
<i>Financing Disbursements</i>										
Credit Facility - Borrowings / (Repayments)	[8]	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
Interest Expense & Fees	[9]	(1.7)	-	(1.6)	-	-	-	-	(1.6)	(4.9)
<i>Restructuring Disbursements</i>										
Professional Fees	[10]	(0.2)	(2.6)	(1.4)	(1.2)	(0.7)	(0.9)	(1.3)	(0.9)	(9.2)
NET CASH FLOWS		\$28.6	(\$81.7)	(\$13.0)	\$44.2	\$36.8	(\$78.9)	\$10.5	\$21.0	(\$32.6)
CASH										
Beginning Balance		\$171.3	\$199.8	\$118.1	\$105.1	\$149.3	\$186.1	\$107.2	\$117.7	\$171.3
Net Cash Inflows / (Outflows)		28.6	(81.7)	(13.0)	44.2	36.8	(78.9)	10.5	21.0	(32.6)
Other (FX)		-	-	-	-	-	-	-	-	-
ENDING CASH		\$199.8	\$118.1	\$105.1	\$149.3	\$186.1	\$107.2	\$117.7	\$138.7	\$138.7
BORROWING SUMMARY										
DIP Facility Credit Limit		\$158.8	\$158.8	\$158.8	\$158.8	\$158.8	\$158.8	\$158.8	\$158.8	\$158.8
DIP Draws		-	-	-	-	-	-	-	-	-
DIP Principal Outstanding		158.8	158.8	158.8	158.8	158.8	158.8	158.8	158.8	158.8
DIP Availability		\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-

1. Sales Receipts include collections from the Company's residential and commercial customers for the sale of energy, which primarily consists of electricity and natural gas, inclusive of sales tax. The sales forecast is based on historical sales patterns, seasonality, and management's current expectations.
2. Miscellaneous receipts reflect forecasted tax refunds and other receipts not sent from customers.
3. Energy & Delivery costs reflect the purchase energy from suppliers and the cost of delivery and transmission to the Company's customers.
4. Payroll disbursements reflect the current staffing levels and recent payroll amounts, inclusive of payroll taxes and any payments associated with the Company's bonus programs.
5. Taxes reflect the remittance of sales taxes collected from customers and the Company's corporate income taxes.
6. Commissions include fees paid to customer acquisition contractors and suppliers.
7. Selling and Other Costs include selling, general, and administrative payments.
8. The Credit Facility Borrowings / (Repayments) show borrowings and repayments under the Company's credit facilities.
9. Interest expenses & fees include interest and fees on the Company's credit and LC facilities.
10. Professional Fees include fees for the Company's counsel and investment banker, the Monitor, the Monitor's Counsel, the DIP lenders' professionals, and fees for Lender Support and Certain Commodity Support Agreements.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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

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Lawyers for the Court-appointed Monitor,
FTI Consulting Canada Inc.

*THIS IS EXHIBIT "BB" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border. The signature is written in a cursive style with a small star-like mark at the end.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

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

Just Energy Group Inc. et al.

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

May 18, 2022

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APPENDICES

Appendix “A”	Plan of Compromise and Arrangement, dated May 26, 2022
Appendix “B”	Cash Flow Forecast for the period ending August 20, 2022
Appendix “C”	Fee Affidavit of Paul Bishop sworn May 17, 2022
Appendix “D”	Fee Affidavit of Rachel Nicholson sworn May 16, 2022
Appendix “E”	Fee Affidavit of John Higgins sworn May 11, 2022

**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**”)

TENTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Filing Date**”), Just Energy Group Inc. (“**Just Energy**”) and certain of its affiliates (collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the “**CCAA**” and in reference to the proceedings, the “**CCAA Proceedings**”).
2. Pursuant to the Initial Order, among other things, (i) a stay of proceedings (the “**Stay of Proceedings**”) was granted until March 19, 2021 (the “**Stay Period**”); (ii) the

protections of the Initial Order, including the Stay of Proceedings, were extended to certain subsidiaries of Just Energy that are partnerships (collectively with the Applicants, the “**Just Energy Entities**”); (iii) FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”); and (iv) the Court approved a debtor-in-possession interim financing facility in the maximum principal amount of US\$125 million subject to the terms and conditions set forth in the financing term sheet (the “**DIP Term Sheet**”) between the Just Energy Entities and Alter Domus (US) LLC, as administrative agent for the lenders (the “**DIP Lenders**”) dated March 9, 2021.

3. The Initial Order was amended and restated on March 19, 2021 and May 26, 2021 (the “**Second A&R Initial Order**”).
4. On March 9, 2021, Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), commenced proceedings under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceedings**”) for each of the Just Energy Entities with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”). The U.S. Court entered, among others, the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code*. On April 2, 2021, the U.S. Court granted the *Order Granting Petition for (I) Recognition as Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “**Final Recognition Order**”). The Final Recognition Order, among other things, gave full force and effect to the Initial Order in the United States, as may be further amended by the Court from time to time.
5. On September 15, 2021, the Court granted the Claims Procedure Order (the “**Claims Procedure Order**”) that approved the claims process for the identification, quantification, and resolution of Claims (as defined in the Claims Procedure Order) as against the Just Energy Entities and their respective directors and officers (the “**Claims Procedure**”).
6. By order dated February 9, 2022, the Court denied, with reasons to follow, certain relief requested by Canadian counsel to U.S. counsel to Fira Donin and Inna Golovan in their

capacity as proposed representative plaintiffs in *Donin et al. v. Just Energy Group Inc. et al.* (the “**Donin Action**”), and Trevor Jordet in his capacity as proposed representative plaintiff in *Jordet v. Just Energy Solutions Inc.* (the “**Jordet Action**” and together with the Donin Action, the “**Donin/Jordet Actions**”). The Court’s reasons for the dismissal are set out in the written reasons of Justice McEwen dated February 23, 2022 (the “**McEwen Endorsement**”), which is available on the Monitor’s Website (as defined below). Canadian counsel to U.S. counsel for the Donin/Jordet Actions filed a Notice of Motion for Leave to Appeal the McEwen Endorsement to the Court of Appeal for Ontario on February 24, 2022 (the “**Motion for Leave to Appeal**”). The Just Energy Entities filed their response to the Motion for Leave to Appeal on April 29, 2022.

7. On March 3, 2022, the Court granted an Order extending the Stay Period until March 25, 2022 and appointing the Honourable Justice Dennis O’Connor as Claims Officer (the “**Claims Officer**”) with respect to the adjudication of the Donin/Jordet Actions.
8. On March 24, 2022 and April 21, 2022, the Court granted Orders extending the Stay Period until April 22, 2022 and May 26, 2022, respectively, to provide additional time for the Just Energy Entities to file a recapitalization plan.
9. On May 5, 2022, the Court granted an Order authorizing the Foreign Representative to pursue claims under section 36.1 of the CCAA in the U.S. Court subject to the supervision of the Monitor.
10. All references to monetary amounts in this Tenth Report of the Monitor (the “**Tenth Report**”) are in Canadian dollars unless otherwise noted. Any capitalized terms not defined herein have the meanings given to them in the Plan.
11. Further information regarding the CCAA Proceedings, including all materials publicly filed in connection with these proceedings, is available on the Monitor’s website at <http://cfcanada.fticonsulting.com/justenergy/> (the “**Monitor’s Website**”).
12. Further information regarding the Chapter 15 Proceedings, including the Final Recognition Order and all other materials publicly filed in connection with the Chapter 15 Proceedings, is available on the website of Omni Agent Solutions as the U.S. noticing

agent of the Just Energy Entities at <https://omniagentsolutions.com/justenergy> (the “**Noticing Agent’s Case Website**”).

13. All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan. A copy of the Plan is attached as **Appendix “A”** hereto.

PURPOSE

14. The purpose of this Tenth Report is to provide information to the Court with respect to the following:
- (a) the Monitor’s activities since the Monitor’s Ninth Report to the Court dated April 18, 2022 (the “**Ninth Report**”);
 - (b) the relief sought by the Applicants in their proposed Order (the “**Meetings Order**”), including the following relief:
 - (i) accepting the filing of the Just Energy Entities’ Plan of Compromise and Arrangement dated May 26, 2022 (as may be amended from time to time, the “**Plan**”);
 - (ii) authorizing the Just Energy Entities to establish two classes of creditors for the purpose of considering and voting on the Plan: (A) the Secured Creditor Class; and (B) the Unsecured Creditor Class;
 - (iii) authorizing the Just Energy Entities to call, hold and conduct virtual meetings (the “**Creditors’ Meetings**”) of the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on resolutions to approve the Plan, and approving the voting and other procedures to be followed with respect to the Creditors’ Meetings;
 - (c) the relief sought by the Applicants in their proposed Order (the “**Authorization Order**”), including the following relief:
 - (i) approving the Support Agreement and the Backstop Commitment Letter (as such terms are defined herein) and related relief with respect to such agreements;

- (ii) approving the Termination Fee (as defined herein) and granting a Court-ordered charge as security for payment of the Termination Fee;
 - (iii) amending the Claims Procedure Order to permit the Just Energy Entities to elect, in consultation with the Monitor, that any Claim that arises from or relates primarily to the winter storm that occurred in Texas in February 2021 and that was submitted by a Claimant who lives in the U.S. (or lived in the U.S. at the time of such winter storm) (collectively, the “**Winter Storm Claims**”) be adjudicated and determined by the U.S. Court, at its discretion;
 - (iv) extending the Stay Period to August 19, 2022;
 - (v) approving the activities, conduct and Tenth Report of the Monitor; and
 - (vi) approving the fees and disbursements of the Monitor and its Canadian and U.S. counsel incurred in the CCAA Proceedings for the period from October 30, 2021 to May 6, 2022 and May 7, 2022, as applicable;
- (d) a contract disclaimer issued by Just Energy (U.S.) Corp. with the consent of the Monitor pursuant to the CCAA;
- (e) an update on the Claims Procedure and the resolution of Claims pursuant to the Claims Procedure Order;
- (f) the Just Energy Entities’ actual cash receipts and disbursements for the 4-week period ending May 7, 2022, a comparison to the cash flow forecast attached as Appendix “A” to the Monitor’s Ninth Report, along with an updated cash flow forecast for the period ending August 20, 2022; and
- (g) the Monitor’s recommendations in respect of the foregoing, as applicable.

TERMS OF REFERENCE AND DISCLAIMER

15. In preparing this Tenth Report, the Monitor has relied upon audited and unaudited financial information of the Just Energy Entities, the Just Energy Entities’ books and records, and discussions and correspondence with, among others, management of and

advisors to the Just Energy Entities as well as other stakeholders and their advisors (collectively, the “**Information**”).

16. Except as otherwise described in this Tenth Report:
 - (a) the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Tenth Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
17. The Monitor has prepared this Tenth Report to provide information to the Court in connection with the relief requested by the Applicants. This Tenth Report should not be relied on for any other purpose.

MONITOR’S ACTIVITIES SINCE THE NINTH REPORT

18. In accordance with its duties as outlined in the Initial Order, the Claims Procedure Order and its prescribed rights and obligations under the CCAA, the activities of the Monitor since the Ninth Report have included the following:
 - (a) assisting the Just Energy Entities with communications to employees, creditors, vendors, and other stakeholders;
 - (b) participating in regular and frequent discussions with the Just Energy Entities, their respective legal counsel and other advisors regarding, among other things, the CCAA Proceedings, the Just Energy Entities’ restructuring initiatives including with respect to the Plan, the Claims Procedure, and the structure of the Creditors’ Meetings;
 - (c) participating in regular discussions with the DIP Lenders and other key stakeholders, and their respective legal counsel and other advisors regarding,

among other things, the Just Energy Entities' restructuring initiatives and the Plan;

- (d) in consultation with the Just Energy Entities, administering the Claims Procedure, reviewing and recording filed Claims, issuing Notices of Revision or Disallowance and amended Negative Notices (as each term is defined in the Claims Procedure Order), and notifying creditors of accepted Claims where applicable;
- (e) discussions with the Just Energy Entities relating to the settlement of certain state taxes;
- (f) monitoring the cash receipts and disbursements of the Just Energy Entities;
- (g) working with the Just Energy Entities, their advisors, and the Monitor's counsel, as applicable, to, among other things:
 - (i) provide stakeholders with financial and other information as appropriate in the circumstances;
 - (ii) assist the Just Energy Entities in furthering their analysis and considerations with respect to the Plan, including assisting with the preparation of related cash flow forecasts, analysis, and presentations; and
 - (iii) ensure compliance with the requirements of regulators in applicable jurisdictions;
- (h) attending meetings of the Board of Directors of Just Energy, and various committees thereof;
- (i) responding to stakeholder inquiries regarding the Claims Procedure and the CCAA Proceedings generally;
- (j) observing the developments and steps taken by the parties to the adjudication of the Donin/Jordet Actions, and providing assistance to the Claims Officer where requested;

- (k) posting monthly reports on the value of the Priority Commodity/ISO Obligations to the Monitor's Website in accordance with the terms of the Second A&R Initial Order;
- (l) maintaining the service list for the CCAA Proceedings (the "**Service List**") with the assistance of counsel for the Monitor, a copy of which is posted on the Monitor's Website; and
- (m) preparing this Tenth Report.

THE PROPOSED RESTRUCTURING PLAN AND MEETINGS ORDER

19. As noted in the Monitor's prior reports to the Court, the Plan has been the subject of months-long negotiations among the Just Energy Entities, in consultation with the Monitor, and key stakeholders including:
- (a) the entities that are DIP Lenders and, together with an affiliated limited partner, are holders of substantially all of the debt issued under the First Amended and Restated Loan Agreement dated as of September 28, 2020 (as amended from time to time, the "**Term Loan Agreement**", the registered lenders thereunder, the "**Term Loan Lenders**" and each beneficial holder thereof, a "**Beneficial Term Loan Claim Holder**");
 - (b) the Plan Sponsor, which is comprised of the same investment funds that constitute the DIP Lenders;
 - (c) the lenders under the ninth amended and restated credit agreement with Just Energy Ontario L.P. and Just Energy U.S. Corp. ("**Just Energy U.S.**"), dated as of September 28, 2020 (as amended from time to time, the "**Credit Agreement**", the lenders thereunder, the "**Credit Facility Lenders**", and National Bank of Canada as the administrative agent thereunder, the "**Credit Facility Agent**");
 - (d) Shell Energy North America (Canada) Inc., Shell Energy North America (US), L.P., and Shell Trading Risk Management, LLC (collectively, "**Shell**") as secured commodity suppliers; and

- (e) CBHT Energy I LLC (“**CBHT**”), an affiliate of the DIP Lenders and the holder and assignee of all secured pre-filing claims (the “**BP Commodity / ISO Services Claims**”) previously held by BP Canada Energy Group ULC and BP Energy Company (together, “**BP**”).
20. Consensus has been reached among the Just Energy Entities and key stakeholders with respect to the Plan, in consultation with the Monitor, as demonstrated by the Support Agreement dated May 12, 2022 (the “**Support Agreement**”) entered into among the Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Credit Facility Lenders, and certain Term Loan Lenders that are signatories thereto. The stakeholder parties to the Support Agreement account for more than \$1 billion of the Just Energy Entities’ secured and unsecured debt.
21. The Applicants now seek the Court’s acceptance of the filing of the Plan, and authorization and direction to call, hold and conduct the Creditors’ Meetings for the purposes of having the Affected Creditors vote on the Plan.

Overview of the Plan

22. The Plan, if implemented, will permit the Just Energy Entities to exit both the CCAA Proceedings and the Chapter 15 Proceedings without any material disruption to normal business operations and with a significantly deleveraged balance sheet. Specifically, the Plan’s implementation would eliminate the Just Energy Entities’ funded debt in amounts totaling,¹ less any Credit Facility Remaining Debt, US\$252.0 million and \$109.6 million plus applicable fees, interest, or other amounts owing and provide a minimum \$75 million of new liquidity.
23. A high-level overview of the Plan follows:

¹ Funded debt eliminated would include: (i) the Credit Facility Claim of approximately US\$43.4 million and \$96.4 million plus accrued default interest through the Effective Date less the Credit Facility Remaining Debt (if any) of up to \$20 million excluding letters of credit that are issued but undrawn at the Effective Date; (ii) the Term Loan Claim of approximately US\$208.6 million plus applicable pre-filing accrued and outstanding fees, interest, or other amounts owing; and, (iii) the Subordinated Note Claim of approximately \$13.2 million plus applicable accrued and outstanding fees, interest, or other amounts owing.

- (a) *Reorganized Corporate Structure*: the Just Energy Entities will be reorganized such that upon implementation of the Plan, Just Energy U.S. or another company organized in the U.S. will be the ultimate parent of the Just Energy Entities (the “**New Just Energy Parent**”). The New Just Energy Parent will be a private company with two classes of shares – newly issued common shares (the “**New Common Shares**”) and newly issued preferred shares (the “**New Preferred Shares**”).
- (i) *New Preferred Shares*: on the Effective Date², CBHT, as the holder and assignee of all pre-filing secured claims previously held by BP, will receive 100% of the New Preferred Shares of the New Just Energy Parent; and
- (ii) *New Common Shares*: on the Effective Date, the New Just Energy Parent will complete an equity offering in the aggregate amount of US\$192.55 million for 80% of the New Common Shares (the “**New Equity Offering**”), subject to dilution by the equity issued or issuable pursuant to the management incentive plan contemplated by the Support Agreement (“**MIP**”). The New Equity Offering will be backstopped in accordance with the Backstop Commitment Letter (as defined herein), and will be open for participation to each Backstop Party and Beneficial Term Loan Claim Holder (as such terms are defined herein), subject to applicable securities laws;
- (b) *New Credit Agreement and Intercreditor Agreement*: on the Effective Date, applicable Just Energy Entities will enter into: (i) an amended and restated credit agreement (the “**New Credit Agreement**”) with the Credit Facility Lenders which will provide for a \$250 million first lien revolving credit

² The day on which the conditions precedent to the implementation of the Plan are satisfied or otherwise waived in accordance with the Plan and the Monitor delivers the required certificates to the Just Energy Entities’ counsel and the Plan Sponsor’s counsel.

- facility³, and (ii) a new intercreditor agreement with the Credit Facility Lenders, Shell, and other applicable Commodity Suppliers;
- (c) *Two Classes of Creditors*: two classes of creditors will be established for purposes of voting on and receiving a distribution as provided for in the Plan – the Secured Creditor Class and the Unsecured Creditor Class (as such terms are defined herein);
- (d) *Administrative Expense Reserve and Unsecured Creditor Cash Pool*: the Just Energy Entities will deliver or cause to be delivered to the Monitor the aggregate amount of: (i) \$1.9 million (the “**Administrative Expense Reserve**”); and (ii) \$10 million (the “**General Unsecured Creditor Cash Pool**”, and together with the Administrative Expense Reserve, the “**Plan Implementation Fund**”). The fees and disbursements of the Monitor, its counsel and any other person retained by it, in connection with administrative and estate matters (the “**Monitor Administration Expenses**”) will be paid from the Administrative Expense Reserve. Any unused portion of the Administrative Expense Reserve will be transferred by the Monitor to the New Just Energy Parent;
- (e) *Secured Creditor Recoveries*: the Credit Facility Claim will be paid in full in cash on the effective date of the Plan, less up to \$20 million of the Credit Facility Remaining Debt (if any), which will remain outstanding under the New Credit Agreement;
- (f) *Unsecured Creditor Recoveries*: within the Unsecured Creditor Class:
- (i) the Term Loan Lenders will receive their *pro rata* share of 10% of the New Common Shares (subject to dilution by the MIP) and the ability to participate in the New Equity Offering;

³ Pursuant to the Plan, the Credit Facility Remaining Debt (if any) of up to \$20 million will remain as an initial outstanding principal amount under the New Credit Agreement.

- (ii) Convenience Claim (as defined herein) holders will be paid in full up to \$1,500⁴ from the General Unsecured Creditor Cash Pool and are deemed to vote in favour of the Plan;
- (iii) General Unsecured Creditors with Accepted Claims will be paid their *pro rata* share of the balance of the General Unsecured Creditor Cash Pool after deducting for the following amounts that shall be paid in priority from the General Unsecured Creditor Cash Pool: (A) the amount required to be paid under (ii) above; and (B) the reasonable fees and disbursements of the Just Energy Entities' legal and financial advisors, the Monitor and its counsel, and any other person retained by the Just Energy Entities or the Monitor in connection with post-Effective Date matters (other than the Monitor Administration Expenses), including all costs to resolve undetermined claims such as the Contingent Litigation Claims (as defined below);
- (g) *BP Commodity/ISO Services Claimholder*: on the Effective Date, in full and final satisfaction of the BP Commodity / ISO Services Claims, New Just Energy Parent shall issue the New Preferred Shares to the BP Commodity / ISO Services Claimholder.
- (h) *De Minimis Claim*: Claims less than \$10 will not receive a distribution under the Plan (“**De Minimis Claims**”). Given that such Claims form part of the Convenience Class, Creditors holding a De Minimis Claim are deemed to vote in favour of the Plan;
- (i) *Unaffected Claims*: numerous claims are unaffected under the Plan and are not entitled to vote on, or receive any distributions under, the Plan including Post-Filing Claims, any claims secured by the CCAA Charges (which shall all be fully satisfied), Commodity Supplier Claims (as described further below), certain regulatory claims, and claims that are not capable of compromise under the CCAA;

⁴ Other than De Minimis Claims, as described below.

- (j) *Commodity Supplier Claims*: the pre-filing secured claims of Commodity Suppliers⁵ shall be paid in full in cash and are treated as “unaffected” under the Plan; and
 - (k) *Equity Claims*: Equity Claims will not receive any distributions under the Plan, will be extinguished, and are not entitled to vote on the Plan.
24. The Plan relies on various assumptions and projections regarding, among other things, the financial performance of the Just Energy Entities over the coming months, including forecasted commodity prices for natural gas and electricity. If there is a material deviation from the projections, there is a risk that more capital may be required in order for the Just Energy Entities to be able to implement the Plan. The Monitor understands that the Just Energy Entities have no certainty that such capital will be available, the terms on which it may be provided, or the impact it will have on other stakeholders.
25. The proposed Meetings Order provides that the Plan may be amended (a “**Plan Modification**”) in accordance with its terms, which in-turn requires (a) the prior consent of the Monitor, the Credit Facility Lenders, Shell and the Plan Sponsor (which consent shall not be unreasonably withheld, conditioned or delayed), and (b) that any Plan Modification shall be posted on the Monitor’s Website, distributed to the Service List and provided to the Affected Creditors during the Creditors’ Meetings.

Plan Releases

26. The proposed Plan provides full and final releases from the Released Claims (as defined below) in favour of the following persons, among others (collectively, the “**Released Parties**”): the present and former affiliates, directors, officers, advisors, legal counsel and agents of such Released Parties; the Just Energy Entities, the Monitor, the parties that have executed the Support Agreement, the Backstop Parties (as defined herein), the DIP Agent, the DIP Lenders and the Plan Sponsor; the Credit Facility Agent, the Term Loan Agent, and the Subordinated Note Trustee.

⁵ This includes Shell’s Commodity Supplier Claim but not the BP Commodity / ISO Services Claims that are being satisfied pursuant to the issuance of the New Preferred Shares.

27. The “**Released Claims**” include any and all claims, demands, causes of action, dealings, occurrences that existed or took place prior to the Effective Date, or that relate to implementation of the Plan, including distributions pursuant to the Plan following the Effective Date, that constitute or are in any way related to, arise out of or in connection with, among other things:
- (a) any Claims and D&O Claims (as such terms are defined in the Claims Procedure Order);
 - (b) the business and affairs of the Just Energy Entities whenever or however conducted;
 - (c) the Support Agreement, the Backstop Commitment Letter, the CCAA Proceedings and Chapter 15 Proceedings, or any document, instrument, matter or transaction involving the Just Energy Entities arising in connection with or pursuant to any of the foregoing; and
 - (d) any contract that has been restructured, terminated, repudiated, disclaimed, or resiliated in accordance with the CCAA.
28. The releases provided in the Plan do not release or discharge:
- (a) Insured Claims, provided that from and after the Effective Date, any person having an Insured Claim will be irrevocably limited to recovery from the proceeds of the applicable Insurance Policies;
 - (b) any obligations of any of the Released Parties under or in connection with the Plan, the Support Agreement, the Backstop Commitment Letter, the Definitive Documents, the New Credit Facility Documents, the New Intercreditor Agreement, the New Common Shares, the New Preferred Shares, the MIP or the New Corporate Governance Documents;
 - (c) any Unaffected Claim that has not been paid in full under the Plan, or any claim that is not permitted to be released pursuant to section 19(2) of the CCAA; or
 - (d) any Director from any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

29. The Plan also includes various exculpations. Specifically, the Plan provides that the Exculpated Parties (which includes certain of the Released Parties) shall be released to the fullest extent possible under applicable laws from any cause of action for any act or omission in connection with, relating to, or arising out of the restructuring proceedings.

Conditions Precedent

30. The Plan is conditional on the following being satisfied or waived prior to or at the Effective Date, among other things:
- (a) the Plan shall have been approved by the Required Majorities in conformity with the CCAA;
 - (b) the Meetings Order, the Authorization Order, and the Sanction Order shall have been issued by the Court and related recognition orders shall have been entered by the U.S. Court;
 - (c) the commitments of each of the parties to the Support Agreement shall have been satisfied in all material respects or waived;
 - (d) all conditions to the Backstop Parties' commitments under the Backstop Commitment Letter shall have been satisfied or waived;
 - (e) the Monitor shall have received from the Just Energy Entities the funds necessary to establish, and shall have established, the Plan Implementation Fund;
 - (f) no proceeding shall have been commenced that could reasonably be expected to result in an injunction, and no injunction or other order shall have been issued to enjoin, restrict or prohibit any of the transactions contemplated by the Plan, the Support Agreement or the Backstop Commitment Letter;
 - (g) Just Energy shall have satisfied all conditions or requirements necessary to cease to be a reporting issuer under the U.S. Exchange Act (or any other U.S. securities laws), and applicable Canadian Securities Laws, and no Just Energy Entity shall be deemed to have become a reporting issuer under applicable Canadian Securities Laws;

- (h) the aggregate amount of proceeds from the New Equity Offering and Cash on Hand shall be equal to or greater than the total amount to be paid, distributed, or reserved for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan;
- (i) the total amounts to be paid, distributed or reserved in Canadian and US dollars for or from any source by the Just Energy Entities (or the Monitor on their behalf) in order to implement the Plan shall not exceed \$170 million and US\$337 million, respectively, plus any accrued and outstanding interest with respect to such amounts;
- (j) all applicable required regulatory approvals shall have been obtained and be in full force and effect; and
- (k) the Effective Date shall have occurred on or prior to the Outside Date (as defined below).

Classification of Creditors

31. The proposed Meetings Order establishes two classes of Affected Creditors for the purposes of considering and voting on the Plan:
- (a) the “**Secured Creditor Class**”, consisting of the Credit Facility Lenders in respect of all amounts owing under the current Credit Agreement as of the Effective Date, excluding any Cash Management Obligations (as defined in the Second ARIO), any Commodity Supplier Claims, or any letters of credit issued but undrawn under the Credit Agreement;
 - (b) the “**Unsecured Creditor Class**”, consisting of both:
 - (i) *Term Loan Claimholders*: in respect of the aggregate principal amount of US\$208.6 million owing by the Just Energy Entities under the Term Loan Agreement plus all accrued and outstanding pre-filing fees, costs, interest, or other amounts owing pursuant to the Term Loan Agreement, as determined in accordance with the Claims Procedure Order; and
 - (ii) *General Unsecured Claimholders*: in respect of all Affected Claims which are not a Term Loan Claim, an Equity Claim, a Credit Facility

Claim, a Commodity Supplier Claim or a BP Commodity / ISO Services Claim.

32. The general unsecured claimholders category of the Unsecured Creditor Class includes the following claims:

- (a) one certified and two uncertified class actions (collectively, the “**Subject Class Action Claims**”) in respect of which Proofs of Claim were filed in accordance with the Claims Procedure Order:
 - (i) *Haidar Omarali v. Just Energy Group Inc. et al.*, Ontario Superior Court of Justice Court File No. CV-15-527493-00CP, a certified class action proceeding filed in Ontario alleging improper classification of employees and claiming \$105.9 million. In consultation with the Monitor, the representative plaintiff’s claims against the applicable Just Energy Entities and certain directors and officers of the Just Energy Entities have been denied in their entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff has filed corresponding Notices of Dispute of Revision or Disallowance;
 - (ii) The Jordet Action: *Trevor Jordet v. Just Energy Solutions, Inc.*, Case No. 2:18-cv-01496-MMB, a proposed and uncertified class action proceeding filed solely against Just Energy Solutions Inc. (“**Solutions**”) in the U.S. District Court in the Western District of New York alleging improper pricing for residential gas services and claiming US\$3.7 billion (this number represents a joint damages calculation with the *Donin* claim below). In consultation with the Monitor, the representative plaintiff’s claim against Solutions has been denied in its entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff law firm has filed a corresponding Notice of Dispute of Revision or Disallowance, and this matter is now before the Honourable

Justice Dennis O'Connor as Claims Officer pursuant to the order of the Court dated March 3, 2022;

- (iii) The Donin Action: *Fira Donin and Inna Golovan v. Just Energy Group Inc.* et al., Case No. 1:17-cv-05787-WFK-SJB, a proposed and uncertified class action proceeding filed against certain Just Energy Entities in the U.S. District Court in the Eastern District of New York alleging improper pricing for energy services and claiming US\$3.7 billion (this number represents a joint damages calculation with the *Jordet* claim above). In consultation with the Monitor, the representative plaintiff's claims against the applicable Just Energy Entities has been denied in its entirety through the delivery of Notice of Revision or Disallowance in accordance with the Claims Procedure Order. The representative plaintiff law firm has filed a corresponding Notice of Dispute of Revision or Disallowance, and this matter is now before the Honourable Justice Dennis O'Connor as Claims Officer pursuant to the order of the Court dated March 3, 2022;
- (b) 364 claims filed on behalf of Texas customers (or alleged Texas customers) relating to the Texas winter storm weather event in February 2021 (the "**Texas Power Interruption Claim**" and together with the Class Action Claims, the "**Contingent Litigation Claims**"). In consultation with the Monitor, all such claims have been denied in their entirety through the delivery of Notices of Revision or Disallowance in accordance with the Claims Procedure Order, which led to the withdrawal of 92 of the 364 submitted claims. The representative plaintiff law firms have filed corresponding Notices of Dispute of Revision or Disallowance in respect of the balance of claims;
- (c) the claim with respect to the amount of \$13.2 million owing by Just Energy under the Subordinated Note Indenture dated September 28, 2020 (the "**Subordinated Note Indenture**"), plus all accrued and outstanding fees, costs, interest, and other amounts owing pursuant to the Subordinated Note Indenture, as determined in accordance with the Claims Procedure Order (the "**Subordinated Note Claim**"); and

- (d) “**Convenience Claims**”, being any Accepted Claim of a General Unsecured Creditor in an amount that is either (a) less than or equal to \$1,500; or (b) greater than \$1,500, if the relevant General Unsecured Creditor has made a valid Distribution Election in accordance with the Meetings Order, provided that in no case shall a “Convenience Claim” include any Contingent Litigation Claim or the Subordinated Note Claim.

Voting Entitlements

33. The voting entitlement on the Plan is determined and calculated as follows:

- (a) *Secured Creditor Class*: each Credit Facility Lender will be entitled to one (1) vote in the amount equal to such Credit Facility Lender’s *pro rata* share of the Credit Facility Claim that is an Accepted Claim;
- (b) *Unsecured Creditor Class*:
- (i) each Term Loan Lender will be entitled to one (1) vote in the amount equal to such Term Loan Lender’s *pro rata* share of the Term Loan Claim;
- (ii) each Convenience Creditor will be deemed to vote in favour of the Plan in the amount of such Convenience Creditor’s Accepted Claim;
- (iii) each General Unsecured Creditor will be entitled to one (1) vote in the amount equal to such General Unsecured Creditor’s Accepted Claim, provided, however, that:
- (1) the Subordinated Noteholder will be entitled to one (1) vote in the amount equal to the Subordinated Note Claim;
- (2) with respect to the Subject Class Action Claims, each representative plaintiff in any certified Subject Class Action Claim or each proposed representative plaintiffs in any uncertified Subject Class Action Claim will be entitled to one (1) vote in the amount equal to its voting claim (valued by the Just Energy Entities for voting purposes at \$1); and

- (3) with respect to the Texas Power Interruption Claim, each of the plaintiff law firms will be entitled to one (1) vote in an amount equal to its voting claim (valued by the Just Energy Entities for voting purposes at \$1).
34. In addition, each Affected Creditor with a Disputed Claim against the Just Energy Entities (other than the Subject Class Action Plaintiffs and the Texas Power Interruption Claimants' Counsel) will be entitled to attend the applicable Creditors' Meeting and will have one (1) vote at the Creditors' Meeting in the dollar value of such Disputed Claim as set out in the Negative Notice Claims Package or the Disputed Claim acceptance value for voting and distribution purposes, prepared in consultation with the Monitor (the "**Acceptance Value**"), as applicable, sent to the holder of the Disputed Claim or, if no Negative Notice Claims Package or Acceptance Value was sent, the value set forth in the corresponding Proof of Claim.

The Creditors' Meetings

Date, Time and Location

35. The proposed Meetings Order authorizes the Just Energy Entities to convene separate meetings on August 2, 2022 for the Secured Creditor Class and the Unsecured Creditor Class to consider and vote on the Plan at 10:00 a.m. (EDT) and 10:30 a.m. (EDT), respectively. The Creditors' Meetings are intended to be held virtually using a third-party service provider given the ongoing uncertainty posed by the COVID-19 pandemic.

Notice to Creditors

36. The proposed Meetings Order provides for comprehensive notification of the Creditors' Meetings to the Affected Creditors including by delivery of the applicable portion of the Secured Creditor Class Meeting Materials⁶ and Unsecured Creditor Class Meeting

⁶ The Secured Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, and the Secured Creditor Proxy (the "**Secured Creditor Class Meeting Materials**").

Materials⁷ to the respective creditor groups. Specifically, the proposed Meetings Order provides that:

- (a) the Monitor shall:
 - (i) not later than the fourth (4th) day following the date of the Meetings Order, post copies of the Secured Creditor Class Meeting Materials and the Unsecured Creditor Class Meeting Materials on the Monitor's Website and the Noticing Agent's Case Website;
 - (ii) not later than the fourth (4th) day following receipt of the Unsecured Creditor Class Meeting Materials and the contact information for each Term Loan Claim Holder, send to Computershare Trust Company of Canada as Agent under the Term Loan Agreement and to each Term Loan Claim Holder, by mail, courier, personal delivery, or email, certain prescribed Unsecured Creditor Class Meeting Materials, as well as an Additional Backstop Notice (as defined in the Backstop Commitment Letter);
 - (iii) not later than the seventh (7th) day following the date of the Meetings Order, send the Secured Creditor Class Meeting Materials to the Credit Facility Agent;
 - (iv) not later than the seventh (7th) day following the date of the Meetings Order, send certain prescribed Unsecured Creditor Class Meeting Materials by mail, courier, personal delivery or email to each General Unsecured Creditor (other than holders of the Subordinated Note Claim);
- (b) the Just Energy Entities shall:

⁷ The Unsecured Creditor Class Meeting Materials are comprised of the Information Statement, the Notice of Meetings, the Meetings Order, the Unsecured Creditor Proxy, the Subordinated Noteholder VIF, the Distribution Election Notice, the New Equity Offering Participation Form, and the New Shareholder Information Form (the "Unsecured Creditor Class Meeting Materials").

- (i) not later than the fourth (4th) day following the date of the Meetings Order, provide to the Subordinated Note Trustee certain prescribed Unsecured Creditor Class Meeting Materials;
- (ii) provide to the Beneficial Subordinated Note Claim Holders, certain prescribed Unsecured Creditor Class Meeting Materials; and
- (iii) cause CDS Clearing and Depository Services Inc. (“CDS”) to publish a bulletin to each institution that is a CDS participant holding Subordinated Notes outlining the particulars of the Unsecured Creditors’ Meeting.

Conduct of the Creditors’ Meetings

37. The proposed Meetings Order provides that a representative of the Monitor will preside as the Chairperson of the Creditors’ Meetings, a person designated by the Monitor will act as secretary of the Creditors’ Meetings, and that the Monitor may appoint vote scrutineers. The Chairperson will, subject to any further Order of this Court, decide all matters relating to the conduct of the Creditors’ Meetings.
38. The proposed Creditors’ Meetings will be held entirely by electronic means using the platform, technology and services of Lumi Holdings Ltd. (“Lumi”). Lumi’s software is free to meeting participants and allows any person with an internet connection, wherever situated, to observe the meeting, ask questions, and to submit votes in real-time. The Monitor and its Canadian counsel have participated in discussions with representatives from Lumi regarding its platform and services, and the Monitor expects it will be able to complete the tasks charged to the Monitor by the proposed Meetings Order.
39. The only persons entitled to attend the Creditors’ Meetings are:
 - (a) the Affected Creditors entitled to vote at that Creditors’ Meeting or, if applicable, persons holding a valid proxy and their advisors;
 - (b) the Monitor, its counsel, the Chairperson, any scrutineers and the secretary;
 - (c) one or more representatives of the board and/or senior management of the Just Energy Entities, and the Just Energy Entities’ counsel and financial advisor;

- (d) the Plan Sponsor, and its legal counsel and financial advisor;
 - (e) the Subordinated Noteholder on behalf of all beneficial holders of the Subordinated Note Claim; and
 - (f) any other person admitted on invitation of the Just Energy Entities in consultation with the Monitor.
40. The proposed voting procedures were designed by the Just Energy Entities in consultation with the Monitor, and provide, among other things, that:
- (a) the Chairperson will direct a vote on a resolution to approve the Plan and any amendments thereto as well as any other resolutions that the Just Energy Entities consider appropriate in the circumstances with the consent of the Plan Sponsor, the Credit Facility Agent (with respect to the Secured Creditors' meeting) and the Monitor; and
 - (b) the Monitor is required to keep a separate record of votes cast by Affected Creditors with Disputed Claims and report to the Court with respect thereto at the Plan Sanction Hearing. If approval or non-approval of the Plan by Affected Creditors would be affected by the votes cast in respect of Disputed Claims, such result must be reported to the Court as soon as reasonably practicable after the Creditors' Meetings.

Plan Sanction

41. If the Plan is approved by the Required Majorities of Affected Creditors at the Creditors' Meetings, the Just Energy Entities will bring a motion seeking a Sanction Order sanctioning the Plan under the CCAA on August 12, 2022, or such later date as shall be acceptable to the Just Energy Entities, the Monitor, and the Plan Sponsor.
42. The Monitor will provide a report to the Court as soon as practicable after the Creditors' Meetings with respect to: (a) the results of voting at the Creditors' Meetings; (b) whether the Required Majorities have approved the Plan; (c) the separate tabulation for Disputed Claims; and (d) in its discretion, any other matters relating to the requested Sanction Order (the "**Monitor's Meetings Report**"). The Monitor's Meetings Report will be

served on the Service List, and posted on the Monitor's Website and the Noticing Agent's Website prior to the Plan Sanction Hearing.

Monitor's Recommendations in Respect of the Meetings Order

43. As set forth in the proposed Meetings Order, the Monitor will provide a report on the Plan by no later than seven business days before the date of the Creditors' Meetings in accordance with the CCAA.
44. As described in greater detail in the Affidavit of Michael Carter sworn May 12, 2022, the business of the Just Energy Entities has been marketed broadly and extensively over the past approximately two and half years, including prior to these CCAA Proceedings. These efforts were unsuccessful with no binding or executable offers being put forth. Due to the capital-intensive and highly specialized nature of the Just Energy Entities' business, the Monitor understands the potential pool of purchasers is limited.
45. During the CCAA Proceedings, the Just Energy Entities and/or the Financial Advisor have been approached on a confidential basis by interested parties with respect to potential acquisition opportunities for all or some of the Just Energy Entities' business. The Just Energy Entities entered into non-disclosure agreements with three of the interested parties and engaged in extensive discussions with two of the interested parties. The Monitor understands the discussions were unsuccessful as they did not identify any potential proposals that are superior to the Plan.
46. Consequently, the transaction contemplated by the Plan is the only viable option at this time that would allow the Just Energy Entities to emerge from these CCAA Proceedings in a timely fashion and as a going concern. The terms of the Plan have been extensively negotiated, with the involvement of the Monitor, and represent the best alternative available at this time for the Just Energy Entities' various stakeholders.
47. Importantly, and as further described herein under the heading "Alternate Restructuring Proposal and Fiduciary Out", the Support Agreement also expressly permits any interested parties to put forth alternate restructuring proposals during the more than two-month period between now and the Creditors' Meetings, and for Just Energy's board of

directors to consider and accept any such alternate restructuring proposal if it is superior to the transaction contemplated by the Plan.

48. The Monitor has been consulted with respect to the development of the alternate restructuring proposal structure and believes it permits adequate time and opportunity for an interested party to put forth a viable alternative offer that may be found to be a superior offer. Accordingly, the Monitor is of the view that the alternate restructuring proposal and “fiduciary out” structure can produce a viable superior offer if one exists, and given the extensive marketing of the Just Energy Entities’ business over the past few years, a formal sales process is not necessary in the circumstances.
49. For the purposes of voting on the Plan, section 22 of the CCAA provides that a debtor company may divide creditors into classes, and that creditors may be included in the same class if their interests are sufficiently similar to give them a commonality of interest.
50. Subsection 22(2) of the CCAA provides that creditors may be included in the same class taking into account:
 - (a) the nature of the debts, liabilities or obligations giving rise to their claims;
 - (b) the nature and rank of any security in respect of their claims;
 - (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
 - (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.
51. The Monitor has considered the above factors and the jurisprudence that predates the enactment of section 22 of the CCAA. The Monitor is of the view that the Applicants’ classification of Affected Creditors based on the rights and remedies of the class of creditors (i.e. whether those creditors hold security for their claims) is appropriate in the circumstances. The Monitor further believes that any fragmentation of the contemplated classes could jeopardize a viable restructuring.

52. The proposed Meetings Order provides that the representative plaintiff, proposed representative plaintiff or plaintiff law firms in respect of the Contingent Litigation Claims shall each be entitled to one vote valued at \$1.00. The Monitor agrees with the Applicants that this is the only feasible approach in the circumstances particularly given the unliquidated nature of the Contingent Litigation Claims.
53. All of the Contingent Litigation Claims have been disallowed by the Just Energy Entities in consultation with the Monitor. Moreover, the complexity of the unresolved Contingent Litigation Claims is such that it is not possible to carry out a summary process in relation to these claims before the Creditors' Meetings are held nor is it possible to delay the Creditors' Meetings until the resolution of the Contingent Litigation Claims without jeopardizing the entire restructuring.
54. The Monitor is of the view that granting the Contingent Litigation Claims a vote based on the preliminary and inadequate legal and evidentiary grounds put forward in support of same to date would confer on these claimants outsize influence in the form of an effective veto, and would jeopardize a successful going concern restructuring for all other stakeholders, including employees, regulators, suppliers and customers.
55. Valuing the Contingent Litigation Claims at \$1.00 is similarly the only feasible option in the absence of sufficient information and evidence to properly assess and determine the value of such claims. Again, to allow a vote in the amount of the unproven claimed damages of the Contingent Litigation Claims would grant the claimholders an effective veto and diminish if not eliminate the prospects of a viable restructuring.
56. Further, this approach is consistent with the approach taken in several other CCAA proceedings, wherein unliquidated and unresolved contingent claims have been similarly valued at \$1.00 for voting purposes, with the distribution value of those claims calculated later.
57. For all of the foregoing reasons, the Monitor supports the Just Energy Entities' request to present the Plan to the Affected Creditors at the Creditors' Meetings. The Monitor is of the view that any issues of fairness should be considered at the Sanction Hearing, if the Plan is approved by the Required Majorities.

SUPPORT AGREEMENT

58. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Support Agreement.
59. The Just Energy Entities, the Plan Sponsor, CBHT, Shell, the Credit Facility Lenders, and certain Term Loan Lenders are parties to the Support Agreement. At a high level, pursuant to the terms of the Support Agreement:
- (a) the Plan Sponsor, CBHT, Shell, the Supporting Secured CF Lenders, and the Supporting Unsecured Creditors have each agreed to, among other things:
 - (i) support the transactions contemplated by the Support Agreement, the Backstop Commitment Letter and the Plan (the “**Restructuring**”) and vote and exercise any powers or rights available to it to the extent necessary to implement the Restructuring;
 - (ii) use commercially reasonable efforts to cooperate with and assist the Just Energy Entities in obtaining additional support for the Restructuring from the Just Energy Entities’ other stakeholders;
 - (iii) act in good faith and take all actions that are reasonably necessary or appropriate, and all actions required by the Court and/or the U.S. Bankruptcy Court, to support and achieve sanctioning and consummation of the Plan and all transactions and implementation steps provided for or contemplated in the Restructuring; and
 - (iv) not to 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;
 - (b) the Just Energy Entities have agreed to, among other things:
 - (i) support and use commercially reasonable efforts to complete the Restructuring, including making commercially reasonable efforts to complete the Restructuring in accordance with each Milestone (as defined below) provided in the Support Agreement;

- (ii) not file any motion, pleading, or Definitive Documents (as defined and described in the Support Agreement) with the Court, the U.S. Court, or any other court that, in whole or in part, is inconsistent with the Support Agreement or the Plan or undertake any action that is inconsistent with, or is intended to frustrate or impede approval, implementation, and/or consummation of the Restructuring;
- (iii) pay the reasonable and documented fees and expenses of all parties to the Support Agreement incurred in connection with the Restructuring and in accordance with the arrangements in place as of the date of the Support Agreement, including as set forth in the DIP Term Sheet or, with respect to any additional fees and expenses, as otherwise agreed to by the Plan Sponsor;
- (iv) operate the business of the Just Energy Entities in the ordinary course in a manner that is consistent with the Support Agreement, and use commercially reasonable efforts to preserve intact the Just Energy Entities' business, organization, and relationships with third parties and employees (including not disclaiming or terminating any employment or consulting agreement with an officer, director, or member of senior management other than "for cause" without the prior written consent of the Plan Sponsor); and
- (v) not to, directly or indirectly, solicit, initiate, or knowingly take any actions to encourage the submission of any Alternative Restructuring Proposal. Importantly, the foregoing commitment is expressly subject to two material caveats, as discussed below, to provide the opportunity for interested parties that may wish to advance an Alternative Restructuring Proposal within the CCAA process to do so for the benefit of the Just Energy Entities' stakeholders.

60. The Support Agreement may be terminated by the Plan 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 the case of the Plan Sponsor, such

termination events include: (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 Plan Sponsor; and (b) any determination by the Just Energy Entities to proceed with, and accept, a definitive Alternative Restructuring Proposal or a definitive Superior Proposal in accordance with the Support Agreement.

61. In the case of Shell and the Credit Facility Lenders such termination events include if the Effective Date of the Plan has not occurred by:
- (a) November 15, 2022 with respect to the Credit Facility Lenders, subject to certain exceptions with respect to obtaining regulatory approvals; and
 - (b) January 31, 2023 with respect to Shell, unless further extended in accordance with the Support Agreement.

Alternate Restructuring Proposals and the “Fiduciary Out”

62. The Support Agreement provides for a 62-day period between the milestone date for serving the Meeting Materials (June 1, 2022) and the milestone date for the Creditors’ Meetings (August 2, 2022) (the “**Voting Period**”) in addition to the 20 days between the date the proposed Meeting Materials were served on the Service List and June 1, 2022.
63. Any interested parties that wish to propose a viable restructuring transaction more favourable than the Plan, or otherwise submit a bid for all or some of the Just Energy Entities’ property, are permitted to complete their due diligence and submit an Alternative Restructuring Proposal.⁸
64. Pursuant to the Support Agreement, the Just Energy Entities are permitted to, with respect to any Alternative Restructuring Proposals:

⁸ Pursuant to the Support 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 Restructuring.

- (a) consider and respond to such Alternative Restructuring Proposals;
 - (b) provide any person with access to non-public information concerning the Just Energy Entities pursuant to a non-disclosure agreement;
 - (c) engage in, maintain, or continue discussions or negotiations with respect to Alternative Restructuring Proposals, including facilitating any due diligence;
 - (d) cooperate with, assist, or participate in any unsolicited inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals;
 - (e) enter into or continue discussions or negotiations with holders of Claims against, or interests in, a Just Energy Entity (including any party to the Support Agreement), any other party in interest in the CCAA Proceedings or Chapter 15 Proceedings, or any other entity regarding the Restructuring or an Alternative Restructuring Proposal; and
 - (f) enter into an agreement with respect to an Alternative Restructuring Proposal if, following receipt of legal and financial advice, and having regard to the approvals that would be required to implement such transaction, the board of directors of Just Energy (the “**Just Energy Board**”) determines that the terms of such Alternative Restructuring Proposal are more favourable to the Just Energy Entities and their stakeholders than the Restructuring (a “**Superior Proposal**”).
65. The Monitor notes that, under the terms of the Support Agreement, there is no contractual right for any party to match or top any Alternative Restructuring Proposal or Superior Proposal.
66. The Support Agreement includes a “fiduciary out” provision which permits the Just Energy Board to terminate the Support Agreement (subject to the Termination Fee discussed below) if it determines, following receipt of advice from outside legal counsel and financial advisors, (a) that proceeding with the Restructuring would be inconsistent with the exercise of its fiduciary duties or applicable law or (b) in the exercise of its fiduciary duties, to pursue a Superior Proposal. The “fiduciary out” continues until termination of the Support Agreement or sanctioning of the Plan.

67. The Monitor notes that BMO Nesbitt Burns Inc., as financial advisor to the Just Energy Entities in these CCAA proceedings (the “**Financial Advisor**”), has stated that the 62-day Voting Period provided under the Support Agreement is sufficient for interested parties to complete the necessary due diligence and submit an Alternative Restructuring Proposal.
68. The Monitor understands that the Credit Facility Lenders have informed the Just Energy Entities that, unless the Credit Facility Lenders agree otherwise: (a) the exit financing contemplated by the New Credit Agreement will not be available in relation to any restructuring proposal other than the Restructuring contemplated by the Plan; and (b) the Credit Facility Lenders have agreed to provide exit financing and support the Restructuring on the basis that an Alternative Restructuring Proposal must repay in full in cash all indebtedness and obligations of the Just Energy Entities to the Credit Facility Lenders on closing of such Alternative Restructuring Proposal to be acceptable.

Other Milestones under the Support Agreement

69. In addition to the Voting Period milestones and subject to Court approval as applicable, the Support Agreement establishes the following milestones (as may be extended in accordance with the Support Agreement, the “**Milestones**”). The milestones under the DIP Term Sheet have been amended by the DIP Lenders and the Just Energy Entities to align with the aforementioned Milestones.

Milestone	Date
Authorization Order and Meetings Order granted	May 26, 2022
Solicitation Materials mailed with respect to the Creditors’ Meetings	June 1, 2022
Order(s) of the U.S. Bankruptcy Court granted recognizing the Authorization Order (the “ Authorization Recognition Order ”), the Meetings Order (the “ Meetings Recognition Order ”) and the Claims Procedure Order (“ Claims Procedure Recognition Order ”)	June 22, 2022
Creditors’ Meetings held	August 2, 2022
Sanction Order granted	August 12, 2022

Milestone	Date
Motion filed for an Order of the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (“ Recognition and Enforcement Motion ”)	~ August 16, 2022 (2 business days after Sanction Order)
Hearing set before the U.S. Bankruptcy Court on the Recognition and Enforcement Motion	no later than September 9, 2022
Recognition and Enforcement Motion granted by the U.S. Bankruptcy Court recognizing and enforcing the Sanction Order (the “ Sanction Recognition Order ”)	September 15, 2022
Outside date for the Effective Date of the Plan to occur, unless extended by the Plan Sponsor (or, if the only outstanding condition is receipt of regulatory approval(s), as automatically extended by an additional 60 days) (the “ Outside Date ”)	September 30, 2022

70. The Monitor was kept apprised during the negotiations that led to the execution of the extensively negotiated Support Agreement and considers its terms to be fair and reasonable in the circumstances, and critical to ensuring that the best possible outcome is achieved for the benefit of the Just Energy Entities and their stakeholders.

BACKSTOP COMMITMENT LETTER

71. The Backstop Commitment Letter’s purpose is to ensure that the Just Energy Entities are able to secure the necessary funds under the New Equity Offering that are required to implement the Plan, subject to various assumptions. Participation in the Backstop Commitment Letter is open to all Term Loan Claim holders as of the day before service of the Meetings Order motion record (the “**Term Loan Record Date**”). The same four funds that comprise the DIP Lenders, the Plan Sponsor and significant Term Loan Lenders (collectively, the “**Initial Backstop Parties**”) and Just Energy U.S. are party to the Backstop Commitment Letter.
72. At a high level, the Backstop Commitment Letter permits:
- (a) each holder of a Term Loan Claim as of the Term Loan Record Date (that is not an Initial Backstop Party) to become party to the Backstop Commitment Letter, subject to applicable securities laws, delivery of prescribed documents and

notices, and funding of all required commitments (each such holder of the Term Loan Claim that satisfies the foregoing conditions, an “**Additional Backstop Party**”); and

- (b) each Initial Backstop Party and Additional Backstop Party may designate one or more of its Affiliates to (i) perform its obligations or assign its rights and obligations under the Backstop Commitment Letter and/or (ii) receive some or all of the New Common Shares it is entitled to receive pursuant to the Plan, upon the execution by such Affiliate of a joinder and compliance with applicable securities laws (each such Affiliate that satisfies the foregoing conditions, an “**Assignee Backstop Party**”, and together with the Initial Backstop Parties and the Additional Backstop Parties, the “**Backstop Parties**”).
73. The New Equity Offering is open for participation to each person that is, as of the Term Loan Record Date: (a) a Beneficial Term Loan Claim Holder, or permitted designee thereof; and (b) a Backstop Party, which in each case is permitted to participate under applicable securities laws (each a “**New Equity Offering Eligible Participant**”).
74. Pursuant to the Backstop Commitment Letter, each Backstop Party has agreed to subscribe for and receive: (a) its *pro rata* share of the New Equity Offering available to it; (b) its *pro rata* share of any unsubscribed New Common Shares issued under the New Equity Offering; and (c) its *pro rata* share of any New Common Shares for which a New Equity Offering Eligible Participant subscribes but otherwise fails to fulfill its subscription obligations by the New Equity Participation Deadline on August 23 , 2022, or such other date agreed to by the Just Energy Entities and the Plan Sponsor.
75. The commitments of the Backstop Parties under the Backstop Commitment Letter terminate on the earlier of: (a) the Effective Date; (b) the termination of the Backstop Commitment Letter by Just Energy U.S. and/or the Backstop Parties in accordance with the terms thereof; or (c) the Outside Date.

Backstop Commitment Fee & Termination Fee

76. In consideration of the Initial Backstop Parties executing and delivering the Backstop Commitment Letter, Just Energy U.S. agreed that:

- (a) the New Just Energy Parent will issue and deliver to the Backstop Parties New Common Shares representing 10% of the outstanding New Common Shares on the Effective Date, subject to dilution by the equity issued or issuable pursuant to the MIP (the “**Backstop Commitment Fee Shares**”); and
 - (b) a Just Energy Entity organized in the United States (which may be Just Energy U.S.) will pay to the Initial Backstop Parties and any Additional Backstop Parties a cash fee in an aggregate amount equal to US\$15 million (the “**Termination Fee**”) if: (i) the Just Energy Entities terminate the Support Agreement on the basis that the Restructuring would be inconsistent with the exercise of the Just Energy Board’s fiduciary duties or applicable law or to pursue a Superior Proposal; or (ii) the Plan Sponsor terminates the Support Agreement based on the Just Energy Board making the determination to proceed with a definitive Alternative Restructuring Proposal or a definitive Superior Proposal. The Termination Fee is payable concurrently with the consummation of an Alternative Restructuring Proposal.
77. The quantum of the Termination Fee was derived by the Just Energy Entities taking into account (i) the aggregate subscription amount for the New Common Shares to be issued by the New Just Energy Parent (US\$192.55 million), plus (ii) the New Preferred Shares being issued to CBHT (such shares being issued in full satisfaction of a secured claim in the amount of US\$229.5 million and C\$0.2 million, plus all accrued and unpaid interest thereon through the Effective Date).
78. The New Equity Offering represents additional liquidity being made available to the Just Energy Entities, while the New Preferred Shares being issued to CBHT represent the conversion of a secured claim to preferred equity which would otherwise be payable in cash as part of the Plan. Both comprise the new value contribution by the Plan Sponsor and CBHT to the Restructuring.
79. The US\$15 million Termination Fee equates to 3.4% of the additional value contribution of the Plan Sponsor and CBHT.

80. The Termination Fee is proposed to be secured by a Court-ordered charge (the “**Termination Fee Charge**”) in favour of the Initial Backstop Parties on all of the Property (as defined in the Second ARIO) of the Just Energy Entities. The Termination Fee 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.
81. The Monitor considers the terms of the Backstop Commitment Letter to be fair and reasonable in the circumstances. The Monitor has reviewed the affidavit of Mark Caiger sworn May 12, 2022 and considered the Termination Fee, and is of the view that the quantum of the Termination Fee is not unreasonable in the circumstances based on its knowledge, experience, and having regard to the terms of backstop commitments and termination fees in similar matters.

Amendment to the Claims Procedure Order

82. The Claims Procedure Order provides that the Just Energy Entities, in their discretion and in consultation with the Monitor, may refer any dispute raised in a Notice of Dispute of Revision or Disallowance to either a Claims Officer or the Court for adjudication.
83. Within the Claims Process, the Just Energy Entities have received one or more claims that relate to the utility regulatory regime in Texas, including the *Texas Public Utility Regulatory Act*. These particular claims raise issues of U.S. law that are specific to Texas and, as such, appear to be appropriate for determination by the U.S. Court based in Texas, which has carriage of the Applicants’ restructuring in the United States.
84. Accordingly, the Just Energy Entities are seeking to amend the Claims Procedure Order to permit them, in consultation with the Monitor, to have the Winter Storm Claims adjudicated by the U.S. Court, in its discretion, rather than by a Claims Officer or the Court.
85. The Monitor supports the requested amendment, which it believes will provide for an efficient and orderly resolution of such claims.

CONTRACT DISCLAIMER UPDATE

86. On February 17, 2022, Just Energy (U.S.) Corp. disclaimed a service agreement dated May 5, 2016 between it and WNS North America Inc. as contract counterparty (the "**WNS Agreement**") for certain subscription-based services relating to debt collections for residential customer accounts.
87. The WNS Agreement disclaimer was carried out in accordance with the provisions of the CCAA and with the consent of the Monitor. The Monitor found the disclaimer to be fair and reasonable in the circumstances, as it benefited the Just Energy Entities and enhanced the prospect of a viable restructuring. The counterparty to the disclaimed contract did not file an objection with the Court within the 15-day objection period specified under the CCAA.
88. The Just Energy Entities have advised the Monitor that they are continuing to consider the viability of other agreements and may seek to disclaim additional agreements subject to the Monitor's review and approval.

UPDATE ON CLAIMS PROCEDURE

89. Capitalized terms used but not otherwise defined in this section have the meanings attributed to them in the Claims Procedure Order.
90. The Monitor last reported on the Claims Procedure in the Seventh Report of the Monitor dated March 22, 2022 (the "**Seventh Report**"). Since the date of the Seventh Report, the Monitor, with assistance of the Claims Agent and the Just Energy Entities, has taken the following steps with respect to the Claims received:
 - (a) reviewed, recorded, and categorized all Claims including any additional Claims which were received after the date of the Seventh Report;
 - (b) worked with the Just Energy Entities to review and attempt to determine and/or resolve Claims;

- (c) issued several Notices of Revision or Disallowance, as prepared by the Just Energy Entities in consultation with the Monitor, in respect of disallowed Claims;
- (d) notified creditors of certain Claims accepted by the Just Energy Entities;
- (e) engaged in numerous discussions and correspondence with various creditors who filed duplicative, erroneous, or marker claims to have such Claims withdrawn by the Claimant where appropriate; and
- (f) consulted with certain of the Consultation Parties in respect of certain Claims, as authorized pursuant to paragraph 41 of the Claims Procedure Order.

Additional Noticing

91. As part of their review of potential unclaimed property to be reported to various state governmental bodies in 2022, the Just Energy Entities identified a group of approximately 57,000 inactive customers who may be eligible for a customer credit and were inadvertently excluded from the initial noticing process for the Claims Process. To ensure awareness of the Claims Process, the Just Energy Entities, in consultation with the Monitor, instructed the Claims Agent to send notice to these potential Claimants advising them of the existence of the Claims Process, including instructions on how to access a General Claims Package and a dedicated phone number to contact the Just Energy Entities should they have any questions.
92. The Just Energy Entities also identified certain long-outstanding customer refunds that were not captured during the initial noticing process for the Claims Process. These customer refunds meet the dormancy requirements for the state in which the applicable inactive customer resided – generally a period of two years or more. Consistent with the Just Energy Entities’ prior treatment of unclaimed property Claims in the Claims Process, the Monitor is in the process of issuing approximately 40 negative notices totalling approximately \$0.9 million of unsecured claims to the applicable state governmental body.

93. As part of the Chapter 15 Proceedings, the U.S. Court opened a claims portal (the “**U.S. Bankruptcy Portal**”) to accept proofs of claim despite the Claims Process in the CCAA Proceedings not having been initiated or approved at that time. The U.S. noticing agent for the Just Energy Entities recently became aware of approximately 15 Claims totalling approximately US\$3.0 million that were submitted to the U.S. Bankruptcy Portal using generic U.S.-based proof of claim templates (each, a “**U.S. Claim**”). In consultation with the Just Energy Entities, the Monitor sent notice to each party who submitted a U.S. Claim to advise them that, for a claim to be considered and adjudicated as part of the Claims Process, it must be submitted in accordance with the Claims Procedure Order to either the Monitor or the Claims Agent using the approved forms.

Overview of Claims

94. A summary of the Claims submitted in the Claims Procedure segregated by priority and category is presented in the table below. Amounts presented are inclusive of potential duplicate and/or erroneous Claims, and represent the total Claims received by the Just Energy Entities and recorded by the Monitor. Claims denominated in U.S. dollars have been converted at a rate of \$1.26 to US\$1.00 for purposes of this summary.

Category	Total Claims		
	Secured	Unsecured	TOTAL
<i>(amounts stated in millions of CAD)</i>			
Funded Debt	\$ 331	\$ 1,168	\$ 1,499
Commodity & Financial	852	119	970
Litigation	-	10,024	10,024
Tax & Unclaimed Property	0	95	95
Trade & Other	26	512	539
D&O	-	1,554	1,554
Total Claims Received	\$ 1,209	\$ 13,473	\$ 14,682

95. Since the date of the Seventh Report, the Monitor has received and recorded an additional \$2 million in Claims. Based on the preliminary review of such claims by the Just Energy Entities and the Monitor, the Claims received since the date of the Seventh Report generally fall into the following categories: (i) Late-Filed Claims (as defined in the Fifth Report); (ii) a Restructuring Claim filed in relation to the WNS Agreement disclaimed by the Just Energy Entities; and (iii) claims amended to lower amounts or a

reallocation of secured claims and unsecured claims as a result of additional review and resolution of Claims.

Resolution Status of Claims

96. The Just Energy Entities, with assistance from and in consultation with the Monitor, continue to review the Negative Notice Claims, Notices of Dispute of Claim, Proofs of Claim, and Disputes of Notices of Revision or Disallowance received in accordance with the Claims Procedure Order, and are actively working to investigate, and/or resolve the Claims as applicable.
97. A summary of the current resolution status of the Claims is presented in the table below:

Category	Accepted or Deemed Accepted		Under Review	Dispute Resolution in Process	Sub-total Claims Pool	Duplicative Claims or Claim Value Reductions	Total Claims Pool	Rescinded Negative Notices / Withdrawn		Total Claims
	A	B	C	D= A+ B+ C	E	F= D+ E	G	H	= F+ G+ H	
<i>(amounts stated in millions of CAD)</i>										
Funded Debt	\$ 620	\$ 13	\$ -	\$ 633	\$ -	\$ 633	\$ -	\$ 866	\$ 1,499	
Commodity & Financial	484	57	-	541	305	846	9	115	970	
Litigation	-	1	4,835	4,836	4,828	9,664	360	0	10,024	
Tax & Unclaimed Property	5	70	-	75	20	95	0	0	95	
Trade & Other	12	49	1	62	432	494	5	40	539	
D&O	-	0	118	118	0	118	1,436	-	1,554	
Total Claims Received	\$ 1,121	\$ 190	\$ 4,954	\$ 6,265	\$ 5,586	\$ 11,851	\$ 1,810	\$ 1,021	\$ 14,682	
by Claim Priority										
Secured Claims	813	57	-	870	305	1,175	8	26	1,209	
Unsecured Claims	308	133	4,954	5,395	5,281	10,676	1,802	995	13,473	
Total Received	\$ 1,121	\$ 190	\$ 4,954	\$ 6,265	\$ 5,586	\$ 11,851	\$ 1,810	\$ 1,021	\$ 14,682	

98. For a description of the categories utilized in the table above describing the status of the Claims, please refer to paragraph 28 of the Seventh Report.
99. The Monitor will continue to provide further updates regarding the Claims Procedure to the Court as the CCAA Proceedings progress.

RECEIPTS AND DISBURSEMENTS FOR THE 4-WEEK PERIOD ENDED MAY 7, 2022

100. The Just Energy Entities' actual net cash flow for the 4-week period from April 10, 2022 to May 7, 2022, was approximately \$11.1 million better than the Cash Flow Forecast appended to the Ninth Report (the "May Cash Flow Forecast") as summarized below:

<i>(CAD\$ in millions)</i>	<u>Forecast</u>	<u>Actuals</u>	<u>Variance</u>
RECEIPTS			
Sales Receipts	\$215.2	\$214.5	(\$0.7)
Miscellaneous Receipts	-	-	-
<i>Total Receipts</i>	\$215.2	\$214.5	(\$0.7)
DISBURSEMENTS			
<i>Operating Disbursements</i>			
Energy and Delivery Costs	(\$185.5)	(\$180.2)	\$5.4
Payroll	(10.2)	(8.5)	1.7
Taxes	(12.3)	(10.9)	1.4
Commissions	(6.9)	(8.4)	(1.5)
Selling and Other Costs	(13.5)	(8.2)	5.3
<i>Total Operating Disbursements</i>	(\$228.4)	(\$216.2)	\$12.3
OPERATING CASH FLOWS	(\$13.2)	(\$1.7)	\$11.5
<i>Financing Disbursements</i>			
Credit Facility - Borrowings / (Repayments)	\$ -	\$ -	\$ -
Interest Expense & Fees	(3.3)	(3.4)	(0.1)
<i>Restructuring Disbursements</i>			
Professional Fees	(5.4)	(5.8)	(0.3)
NET CASH FLOWS	(\$22.0)	(\$10.8)	\$11.1
CASH			
Beginning Balance	\$171.3	\$171.3	\$ -
Net Cash Inflows / (Outflows)	(22.0)	(10.8)	11.1
Other (FX)	-	(1.1)	(1.1)
ENDING CASH	\$149.3	\$159.3	\$10.0

101. Explanations for the main variances in actual receipts and disbursements as compared to the May Cash Flow Forecast are as follows:

- (a) the favourable variance of approximately \$5.4 million in respect of Energy and Delivery Costs is primarily driven by the following:
 - (i) a favourable timing variance of approximately \$8.6 million due to timing of cash collateral payments and the collection of commodity receivables during the 4-week forecast period; and
 - (ii) a permanent unfavourable variance of approximately \$3.3 million due to higher than forecasted transportation and delivery payments due in

part to higher energy transmission volumes, temporarily increased transportation and delivery rates, and normal course fluctuations;

- (b) the favourable variance of approximately \$1.7 million for Payroll is primarily due to normal course fluctuations for various payroll tax remittances and sales incentive payment timing;
- (c) the favourable temporary variance of approximately \$1.4 million for Taxes is primary due to normal course fluctuations in the timing of tax payments;
- (d) the permanent unfavourable variance of approximately \$1.5 million for Commissions is primarily due to normal course fluctuations related to customer signups and associated commissions; and
- (e) the favourable timing variance of \$5.3 million in respect of Selling and Other Costs is due to lower than forecasted spending rates and to the Just Energy Entities' continued successful negotiation of payment terms and go-forward arrangements with its vendors.

Reporting Pursuant to the DIP Term Sheet

- 102. The variances shown and described herein compare the May Cash Flow Forecast, as appended to the Ninth Report, with the actual performance of the Just Energy Entities over the 4-week period noted.
- 103. Pursuant to Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a variance report setting out the actual versus projected cash disbursements once every four weeks (the “**DIP Variance Report(s)**”). The permitted variances to which certain line items of the cash flow forecast are tested are outlined in section 24(30) of Schedule I of the DIP Term Sheet. The Just Energy Entities provided the required variance report for the four-week period ended April 30, 2022. All variances reported were within the permitted variances.
- 104. Also, in accordance with Section 18 of the DIP Term Sheet, the Just Energy Entities are required to deliver a new 13-week cash flow forecast, which shall replace the immediately preceding cash flow forecast in its entirety upon the DIP Lenders' approval thereof and is used as the basis for the next four-week variance report and permitted

variance testing (the “**DIP Cash Flow Forecast(s)**”). The Just Energy Entities provided the required DIP Cash Flow Forecast, which was approved by the DIP Lenders, for the 13-week period beginning May 1, 2022.

105. As the DIP Variance Report utilizes updated underlying cash flow forecasts vis-à-vis the May Cash Flow Forecast for the same period, the DIP Variance Report differed from the variance analysis above that compares actual results to the May Cash Flow Forecast. For purposes of the Just Energy Entities reporting requirements pursuant to the DIP Term Sheet, the DIP Cash Flow Forecasts as approved by the DIP Lenders will continue to govern.
106. Since the Ninth Report, the Just Energy Entities have complied with their reporting obligations pursuant to the DIP Term Sheet, the Second A&R Initial Order, and other documents including certain support agreements. These reporting obligations during the period included the in-time delivery of the following:
 - (a) Delivery of a Priority Supplier Payables Certificate monthly;
 - (b) Delivery of an ERCOT Related Settlements update weekly;
 - (c) Delivery of a Cash Management Charge update monthly;
 - (d) Delivery of a Priority Commodity / ISO Charge update weekly and monthly;
and
 - (e) Delivery of a Marked to Market Calculation monthly.

CASH FLOW FORECAST FOR THE 15-WEEK PERIOD ENDING AUGUST 20, 2022

107. The Just Energy Entities, with the assistance of the Monitor, have updated and extended their weekly cash flow forecast for the 15-week period ending August 20, 2022 (the “**Summer 2022 Cash Flow Forecast**”), which encompasses the requested stay extension to August 19, 2022. The Summer 2022 Cash Flow Forecast is attached hereto as **Appendix “B”**, and is summarized below:

<i>(CAD\$ in millions)</i>	15-Week Period Ending August 20, 2022
Forecast Week	Total
RECEIPTS	
Sales Receipts	\$791.2
Miscellaneous Receipts	-
<i>Total Receipts</i>	\$791.2
DISBURSEMENTS	
<i>Operating Disbursements</i>	
Energy and Delivery Costs	(\$580.7)
Payroll	(27.5)
Taxes	(29.5)
Commissions	(29.3)
Selling and Other Costs	(45.7)
<i>Total Operating Disbursements</i>	(\$712.7)
OPERATING CASH FLOWS	\$78.5
<i>Financing Disbursements</i>	
Credit Facility - Borrowings / (Repayments)	\$ -
Interest Expense & Fees	(11.5)
<i>Restructuring Disbursements</i>	
Professional Fees	(15.3)
NET CASH FLOWS	\$51.7
CASH	
Beginning Balance	\$159.3
Net Cash Inflows / (Outflows)	51.7
Other (FX)	-
ENDING CASH	\$211.0

108. The Summer 2022 Cash Flow Forecast indicates that during the 15-week period ending August 20, 2022, the Just Energy Entities will have operating cash inflows of approximately \$78.5 million with total receipts of approximately \$791.2 million and total operating disbursements of approximately \$712.7 million, before interest expense and fees of approximately \$11.5 million and professional fees of approximately \$15.3 million, such that total net cash inflows are forecast to be approximately \$51.7 million.
109. Generally, the underlying assumptions and methodology utilized in the May Cash Flow Forecast have remained the same for this Summer 2022 Cash Flow Forecast; however, the Monitor notes the following:

- (a) The forecast period was extended from the week ending June 4, 2022 to the week ending August 20, 2022;
 - (b) The Just Energy Entities have updated and revised certain underlying data supporting the assumptions that contribute to the cash receipts and disbursements included in the Summer 2022 Cash Flow Forecast, which include:
 - (i) Customer cash receipt collection timing and bad debt estimates have been updated based on recent trends;
 - (ii) Customer cash receipt estimates have also been updated based on actualized revenue billed for recent periods combined with refined estimates for future customer billings;
 - (iii) Certain disbursements not incurred during the prior period have been carried forward as they are expected to be incurred in future weeks;
 - (iv) Vendor credit support and cash collateral requirements have been updated based on business requirements and on-going discussions between the Just Energy Entities and its vendors;
 - (v) The tax disbursements forecast has been updated based on the tax department's latest tax payment schedule and estimates; and
 - (vi) Professional fee estimates have been updated to reflect expected activity during the forecast period.
110. The Summer 2022 Cash Flow Forecast demonstrates that, subject to its underlying hypothetical and probable assumptions, the Just Energy Entities are forecast to have sufficient liquidity to continue funding their operations during the CCAA Proceedings to August 20, 2022.

STAY PERIOD EXTENSION

111. The Stay Period will expire on May 26, 2022, and the Applicants are seeking an extension to the Stay Period up to and including August 19, 2022.

112. The Monitor supports extending the Stay Period to August 19, 2022 for the following reasons:
- (a) the Monitor is of the view that the proposed extension to the Stay Period is necessary to provide the Just Energy Entities with time to:
 - (i) satisfy the Milestones under the Support Agreement and allow the 62-day Voting Period to occur;
 - (ii) call, hold and conduct the Creditors' Meetings;
 - (iii) if approved by the Required Majorities of Creditors at the Creditors' Meetings, seek the Sanction Order;
 - (iv) if granted, implement the Plan and emerge from the CCAA Proceedings and Chapter 15 Proceedings;
 - (b) as indicated by the Summer 2022 Cash Flow Forecast, the Just Energy Entities are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
 - (c) no creditor of the Just Energy Entities would be materially prejudiced by the extension of the Stay Period; and
 - (d) in the Monitor's view, the Just Energy Entities have acted in good faith and with due diligence in the CCAA Proceedings since the inception of the CCAA Proceedings.

APPROVAL OF THE FEES AND ACTIVITIES OF THE MONITOR

113. The proposed Authorization Order seeks approval of (i) the activities and conduct of the Monitor since the date of Ninth Report; (ii) this Tenth Report; and (iii) the fees and disbursements of the Monitor and its counsel from October 30, 2021 to May 6, 2022 and May 7, 2022, as applicable.
114. As outlined in the Monitor's previous reports to the Court (all of which are available on the Monitor's Website), the Monitor and its counsel have played, and continue to play, a significant role in the CCAA Proceedings. The Monitor respectfully submits that its actions, conduct, and activities in the CCAA Proceedings since the Ninth Report have

been carried out in good faith and in accordance with the provisions of the orders issued therein and should therefore be approved.

115. Pursuant to paragraphs 42 and 43 of the Second A&R Initial Order, the Monitor, its Canadian and U.S. counsel shall: (i) be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of the Initial Order, by the Just Energy Entities as part of the costs of the CCAA Proceedings; and (ii) pass their accounts from time to time before this Court.
116. Since the Fourth Report to the Court dated November 5, 2021 (when the Monitor and its counsel's fees were last approved), the Monitor and its counsel have maintained detailed records of their professional time and costs. The total fees and disbursements of the Monitor for the period from October 30, 2021 to May 6, 2022 total \$3,115,514.14, including fees in the amount of \$2,755,673.50, disbursements in the amount of \$1,418.63, and Harmonized Sales Tax ("HST") in the amount of \$358,422.01, as more particularly described in the Affidavit of Paul Bishop sworn May 17, 2022 (the "**Bishop Affidavit**"), a copy of which is attached hereto as **Appendix "C"**.
117. The total fees and disbursements of the Monitor's Canadian counsel, from October 30, 2021 to May 6, 2022 total \$1,721,348.65, including fees in the amount of \$1,512,202.50, disbursements in the amount of \$12,157.62, and HST in the amount of \$196,988.53, as more particularly described in the Affidavit of Rachel Nicholson sworn May 16, 2022 (the "**Nicholson Affidavit**"), a copy of which is attached hereto as **Appendix "D"**.
118. The total fees and disbursements of the Monitor's U.S. counsel from October 30, 2021 to May 7, 2022 total US\$115,505.30, including fees in the amount of US\$113,909.50 and disbursements in the amount of US\$1,595.80, as more particularly described in the Affidavit of John Higgins sworn May 11, 2022 (the "**Higgins Affidavit**", together with the Bishop Affidavit and Nicholson Affidavit, the "**Fee Affidavits**"), a copy of which is attached hereto as **Appendix "E"**.
119. The Monitor respectfully submits that the fees and disbursements incurred by the Monitor and its counsel, as described in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the

Second A&R Initial Order. Accordingly, the Monitor respectfully requests the approval of the fees and disbursements of the Monitor and its counsel as set out in the Fee Affidavits.

CONCLUSION

120. The Monitor is of the view that the relief requested by the Applicants is reasonable and justified in the circumstances.
121. Accordingly, the Monitor respectfully supports the requested relief and recommends that the Meetings Order and the Authorization Order be granted.

The Monitor respectfully submits to this Honourable Court this Tenth Report dated this 18th day of May, 2022.

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

Per:



Paul Bishop
Senior Managing Director

APPENDIX “C”
Fee Affidavit of Paul Bishop sworn May 17, 2022

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicants

AFFIDAVIT OF PAUL BISHOP
Sworn May 17, 2022

I, **PAUL BISHOP**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**
AS FOLLOWS:

1. I am a Senior Managing Director with FTI Consulting Canada Inc., which was appointed as the monitor (the “**Monitor**”) of the Applicants in these proceedings (the “**CCAA Proceedings**”) and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as Exhibit “**A**” is a schedule summarizing each invoice in Exhibit “**C**”, the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice. All amounts are stated in Canadian Dollars.

3. Attached hereto as Exhibit “**B**” is a schedule summarizing the billing rates and total amounts billed with respect to each representative of the Monitor that rendered services in connection with the CCAA Proceedings.

4. Attached hereto as Exhibit “**C**” are true copies of the invoices for fees and disbursements incurred by the Monitor in connection with the CCAA Proceedings for the period from October 30, 2021 to May 6, 2022. The total fees charged by FTI during that period were **\$2,755,673.50**, plus disbursements of **\$1,418.63**, plus Harmonized Sales Tax in the amount of **\$358,422.01** for a total of **\$3,115,514.14**. Total hours invoiced in this period were **3,483.2** for an average hourly rate charged of **\$791.13/hour**.

5. To the best of my knowledge, the rates charged by FTI throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services, and are comparable to the hourly rates charged by FTI for services rendered in relation to similar proceedings.

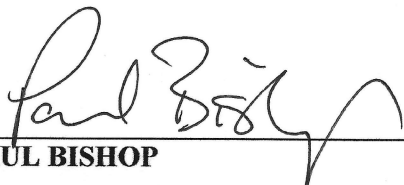
6. The hours spent on this matter involved monitoring the Applicants and addressing issues related to the CCAA Proceedings (as more particularly described in the Monitor’s reports and the invoices attached in Exhibit “**C**”) and I believe the total hours incurred by the Monitor are reasonable and appropriate in the circumstances.

7. The Monitor respectfully requests that the Court approve its invoices for the period from October 30, 2021 to May 6, 2022 for the amounts noted.

SWORN before me, by **PAUL BISHOP**, via video conference from the Town of Seabrook Island, in the State of South Carolina, to the City of Toronto, in the Province of Ontario, this 17th day of May, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits



PAUL BISHOP

Just Energy CCAA
433689.0007 - April 22, 2022

Date	TK#	Name	Hours	Amount	Narrative
04/17/22	24088	Evan Bookstaff	1.70	\$ 1,666.00	Review and provide comments for Monitor's Report.
04/18/22	24088	Evan Bookstaff	0.40	\$ 392.00	Participate in payments process with Company.
04/18/22	24088	Evan Bookstaff	0.40	\$ 392.00	Participate in update call with Counsel.
04/18/22	24088	Evan Bookstaff	0.10	\$ 98.00	Discuss cash update with Company.
04/18/22	24088	Evan Bookstaff	0.30	\$ 294.00	Discuss liquidation analysis with FTI Team.
04/18/22	24088	Evan Bookstaff	3.50	\$ 3,430.00	Update DIP Model with latest assumptions and actuals from Company.
04/22/22	24088	Evan Bookstaff	1.00	\$ 980.00	Participate in liquidation analysis discussion with FTI Team.
04/22/22	24088	Evan Bookstaff	1.70	\$ 1,666.00	Update DIP modeling functionality.
04/21/22	24088	Evan Bookstaff	0.40	\$ 392.00	Review professional fees per question from Monitor's Team.
04/21/22	24088	Evan Bookstaff	0.70	\$ 686.00	Research ERCOT operating assumptions.
04/21/22	24088	Evan Bookstaff	0.50	\$ 490.00	Review liquidation analysis questions with FTI Team.
04/21/22	24088	Evan Bookstaff	0.40	\$ 392.00	Discuss key questions and assumptions for liquidation analysis.
04/22/22	24088	Evan Bookstaff	0.70	\$ 686.00	Participate in payments process with Company.
04/22/22	24088	Evan Bookstaff	0.50	\$ 490.00	Participate in update call with Company.
04/20/22	24088	Evan Bookstaff	2.10	\$ 2,058.00	Update cash forecast for Company's latest assumptions.
04/20/22	24088	Evan Bookstaff	0.50	\$ 490.00	Participate in DIP forecast update call with Company.
04/20/22	24088	Evan Bookstaff	0.10	\$ 98.00	Participate in cash update call with Company.
04/20/22	24088	Evan Bookstaff	2.60	\$ 2,548.00	Build out bridge analysis for DIP forecast per Company's questions.
04/20/22	24088	Evan Bookstaff	0.80	\$ 784.00	Review Liquidation Analysis with FTI Team.
04/21/22	24088	Evan Bookstaff	0.60	\$ 588.00	Participate in payments process with Company.
04/19/22	24088	Evan Bookstaff	0.40	\$ 392.00	Participate in payments process with Company.
04/19/22	24088	Evan Bookstaff	3.20	\$ 3,136.00	Finalize update to DIP model and corresponding analysis for Company's review.
04/19/22	24088	Evan Bookstaff	0.50	\$ 490.00	Discuss DIP forecast with Company.
04/19/22	24088	Evan Bookstaff	0.40	\$ 392.00	Participate in update call with Company counsel.
04/19/22	24088	Evan Bookstaff	0.10	\$ 98.00	Discuss cash update with Company.
04/20/22	24088	Evan Bookstaff	0.70	\$ 686.00	Participate in update call with Counsel.
04/17/22	23261	James Robinson	3.10	\$ 2,898.50	Review of Ninth Report; respond to various messages; review of professional fee invoices;
04/18/22	23261	James Robinson	7.40	\$ 6,919.00	Attend daily payment call with company and review of final payment listing; on-going calls/emails/correspondence with company/Osler/TGF/FTI team/BMO/other stakeholders regarding pending matters; attend FTI/TGF status call; liquidation analysis consideration of key assumptions; review draft factum and comment; review draft affidavit; drafting, editing, and finalizing ninth report, review comments received; review of all plan documents and latest issues; website postings, review and coordination; claims process matters; unclaimed property noticing; US bankruptcy claims;
04/19/22	23261	James Robinson	6.70	\$ 6,264.50	Attend all advisors status call; attend CF review call with company, and review of CF forecast; review contracts tracker; review of plan documentation and respond to Osler questions; website postings review and coordination; review arbitration meeting minutes and provide comments, review Justice O'Connor comments; claims process matters, discussions regarding resolution of BP claim; review collateral request; review draft motion materials along with latest plan documents; review statement of accounts and professional fee invoicing; attend daily payment call with company and review of final payment listing; on-going calls/emails/correspondence with company/Osler/TGF/FTI team/BMO/other stakeholders regarding pending matters;
04/20/22	23261	James Robinson	7.70	\$ 7,199.50	Attend weekly CF review call with company; attend call regarding stakeholder position on relief sought; attend daily payment call with company and review of final payment listing; on-going calls/emails/correspondence with company/Osler/TGF/FTI team/BMO/other stakeholders regarding pending matters; review letter to Monitor sent by stakeholder; review letter to PRRR regarding information requested; review correspondence to legal counsel to stakeholder in response to letter received; review contracts tracker; review payroll summaries; review CF bridge; review outstanding issues list on plan; review variance analysis and updated forecast; review and finalize notice to US bankruptcy court claims filed; website postings, updates and coordination;

Just Energy CCAA
433689.0007 - April 30, 2022

Date	TK#	Name	Hours	Amount	Narrative
04/24/22	24088	Evan Bookstaff	3.50	\$ 3,430.00	Research ERCOT questions.
04/25/22	24088	Evan Bookstaff	0.30	\$ 294.00	Participate in payments process with Company.
04/25/22	24088	Evan Bookstaff	0.50	\$ 490.00	Participate in update call with counsel.
04/25/22	24088	Evan Bookstaff	0.10	\$ 98.00	Participate in cash update call with Company.
04/25/22	24088	Evan Bookstaff	1.20	\$ 1,176.00	Update DIP model.
04/26/22	24088	Evan Bookstaff	0.60	\$ 588.00	Participate in payments process with Company.
04/28/22	24088	Evan Bookstaff	0.60	\$ 588.00	Discuss audit and forecast workstreams with FTI Team.
04/28/22	24088	Evan Bookstaff	0.20	\$ 196.00	Participate in cash update call with Company.
04/28/22	24088	Evan Bookstaff	0.80	\$ 784.00	Review and provide additional comments regarding liquidation analysis.
04/28/22	24088	Evan Bookstaff	3.90	\$ 3,822.00	Update DIP model with latest assumptions from Company.
04/29/22	24088	Evan Bookstaff	0.90	\$ 882.00	Update DIP Model with latest from Company.
04/27/22	24088	Evan Bookstaff	0.50	\$ 490.00	Participate in DIP review call with Company.
04/27/22	24088	Evan Bookstaff	2.60	\$ 2,548.00	Update DIP model with latest assumptions from Company.
04/27/22	24088	Evan Bookstaff	0.40	\$ 392.00	Review backup materials for affidavit.
04/27/22	24088	Evan Bookstaff	1.60	\$ 1,568.00	Review and provide comments for liquidation analysis.
04/27/22	24088	Evan Bookstaff	0.50	\$ 490.00	Discuss liquidation analysis with FTI Team.
04/28/22	24088	Evan Bookstaff	0.80	\$ 784.00	Participate in payments process with Company.
04/26/22	24088	Evan Bookstaff	2.00	\$ 1,960.00	Review Carter and Caiger affidavits with FTI Team.
04/26/22	24088	Evan Bookstaff	1.10	\$ 1,078.00	Review affidavits with Company counsel.
04/26/22	24088	Evan Bookstaff	3.10	\$ 3,038.00	Update DIP Model with latest assumptions and actuals from Company.
04/26/22	24088	Evan Bookstaff	0.20	\$ 196.00	Participate in cash update call with Company.
04/26/22	24088	Evan Bookstaff	0.70	\$ 686.00	Participate in update discussion with Company counsel.
04/27/22	24088	Evan Bookstaff	0.70	\$ 686.00	Participate in payments process with Company.
04/25/22	23261	James Robinson	5.80	\$ 5,423.00	Attend status call with TGF; review LC request and collateral forecast; claims process matters; address mailing matters and planning for plan document circulation, and discussions regarding same; attend daily call with company, review final payment listing and cheque clearing report; on-going calls and correspondence with company/Osler/TGF/FTI team/BMO/other stakeholders regarding pending matters;
04/26/22	23261	James Robinson	7.10	\$ 6,638.50	Attend daily call with company, review final payment listing and cheque clearing report; on-going calls and correspondence with company/Osler/TGF/FTI team/BMO/other stakeholders regarding pending matters; initial review of BMO analysis and affidavits; review contracts tracker; review leave to appeal factum and provide comments; review variances and updated CF, correspond with team and attend call with company; review vendor invoices; prep call with team regarding company/BMO affidavits; attend call with company/Osler regarding affidavits; attend all advisors status call; attend call with team and company regarding creditor recovery analysis, claims, and estimates; address multiple claims process matters, including unclaimed property, noticing, resolution, and NORD status; review TGF comments on factum;
04/27/22	23261	James Robinson	8.60	\$ 8,041.00	Call with claimant and their legal counsel regarding status of restructuring; review updated CF and related call with company/FTI team; call with Osler/TGF regarding logistics for virtual creditor meetings; attend daily call with company, review final payment listing and cheque clearing report; on-going calls and correspondence with company/Osler/TGF/FTI team/BMO/other stakeholders regarding pending matters; provide initial comments on liquidation analysis considerations deck for discussion purposes; correspond with company regarding loss utilization structures and review prior relief granted by the court; correspond with counsel to claimants regarding post filing invoice inquiries and follow up with company on same; multiple claims process matters including NORD's, claims resolution, and to-do's for company/team; review company and BMO affidavits, team discussions on same, tie out of numbers and recoveries;

APPENDIX “D”

Fee Affidavit of Rachel Nicholson sworn May 16, 2022

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicants

AFFIDAVIT OF RACHEL NICOLSON
Sworn May 16, 2022

I, **RACHEL NICHOLSON**, of the City of Toronto, in the Province of Ontario, **MAKE OATH**
AND SAY AS FOLLOWS:

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and I am an associate at Thornton Grout Finnigan LLP (“**TGF**”), lawyers for FTI Consulting Canada Inc., the Court-appointed monitor (the “**Monitor**”) of the Applicants and, as such, I have

knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as **Exhibit "A"** are copies of the invoices issued to the Monitor by TGF for fees and disbursements incurred by TGF through the course of these proceedings between October 30, 2021 through to May 6, 2022. Certain of the invoices contain redactions to protect confidential and privileged information.

3. Attached hereto as **Exhibit "B"** is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

4. Attached hereto as **Exhibit "C"** is a schedule summarizing the respective years of call and billing rates of each of the solicitors at TGF who acted for the Monitor.

5. To the best of my knowledge, the rates charged by TGF throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

6. The hourly billing rates outlined in **Exhibit "C"** to this affidavit are comparable to the hourly rates charged by TGF for services rendered in relation to similar proceedings.

7. I make this affidavit in support of a motion for, *inter alia*, approval of the fees and disbursements of the Monitor's counsel.

SWORN before me, by **RACHEL NICHOLSON**, via video conference from the City of Toronto, in the Province of Ontario, to the City of Vaughan, in the Province of Ontario, this 16th day of May, 2022 in accordance with *O. Reg. 431/20, Administering Oath or Declaration Remotely*.


Commissioner for Taking Affidavits



RACHEL NICHOLSON



Thornton Grout Finnigan LLP
 100 Wellington Street West
 Suite 3000, P.O. Box 987
 Toronto, ON Canada M5W 4W7
 T 416.780.1616 F 416.780.1617

Just Energy Group Inc.
 5251 Westheimer Rd, Suite 1000
 Houston, Texas
 77056
 U.S.A.

May 2, 2022

Attention: Greg Wilks

Invoice No. 38187
File No. 1522-013
PO No. 8884

**RE: FTI Consulting Canada Inc., the Court Appointed Monitor of Just Energy Group Inc. et al.,
 Canadian Legal Counsel fees**

**TO ALL PROFESSIONAL SERVICES RENDERED HEREIN INCLUDING THE FOLLOWING for the
 period ending: April 22, 2022**

FEES

- Apr-17-22 Review and revise Ninth Report per comments from FTI team;
 Review comments on draft report; emails with respect to same;
- Apr-18-22 Review and respond to email correspondence; review of Ninth Report; review of revised plan materials; emails regarding same; prepare for and attend weekly update calls;
 Attend internal update call; attend update call with Monitor; comments on backstop commitment letter, plan support agreement, restructuring term sheet and limited recourse guarantee;
 Revisions to Ninth Report; prepare for and weekly update calls with TGF and FTI teams; review Information Statement; review case law on s.36 claims; review factum in support of s.36.1 claims; review revised plan documents; emails in respect of all of foregoing; emails relating to CBHT claims resolution;
 Revise draft minutes and circulate same; email to K. Sachar with respect to Claims Officer request; review comments on draft plan documents and revised versions of same; attend internal update call; attend Monitor update call; review comments on draft report and emails with respect to same; emails with S. Christensen with respect to Claims Officer hearing; review draft factum; provide comments with respect to same; finalize and serve report; emails with respect to same; emails with respect to BP claim amount;
 Review emails from R. Nicholson, J. Erickson and E. Paplawski regarding contacts on Service List and bounce-backs to service of Ninth Report;
- Apr-19-22 Review of emails and letter from counsel for ERCOT; meeting with counsel; prepare for and conference call with Oslers and Liner regarding status of matter and ERCOT response; review and respond to emails regarding transcript request; prepare for and attend board call regarding approval

of plan; draft report to team regarding same; review of research regarding s. 36.1 claims;

Review and respond to email correspondence; emails regarding correspondence from N. MacParland; review of transcript; review of emails regarding same; prepare for and attend call regarding BP Claim; debrief call with M. DeLellis; call with R. Kleebaum; telephone call with J. Robinson; review of Ninth Report regarding communication and support;

Attend update call with Monitor and Oslers; comments on ERCOT Canadian counsel letter re S 36.1;

Emails in respect of outstanding customer credit noticing; review and emails in respect of ERCOT's position; review revised Carter Affidavit; prepare for and calls regarding assigned BP claim and update call with Osler; research and draft memorandum on standing to pursue s.36.1 claim; emails in respect of tax claims and misfiled US claims;

Email with respect to uploading report to Caselines; review summary email with respect to BP claim; email with respect to credit noticing; review and consider emails and letter from N. MacParland with respect to Canadian hearing; review US transcript and emails with respect to same; attend update call with Osler; receive comments from Justice O'Connor on draft minutes and circulate same to the parties; review and provide comments on draft email to N. MacParland; emails with respect to zoom link for court motion; emails with respect to plan; review update with respect to board call;

Apr-20-22

Review and respond to emails regarding guarantees; prepare for and telephone call with Natasha MacParland regarding position of ERCOT and company relief issues; telephone call R. Nicholson regarding submissions; prepare for and conference call with R. Kennedy and R. Nicholson regarding submissions for ERCOT and responses to Wittels letter; conference call with client regarding same; review and respond to emails regarding same;

Review of materials and prepare for court attendance; various calls with R. Thornton and Osler regarding submissions; prepare submissions; research regarding transfers for undervalue in a proposal; consider section 101 of the BIA; further preparation of submissions for court attendance; various calls with R. Nicholson regarding response to Paliare and response to Davies;

Comments on limited recourse guarantee and pledge of shares of topco;

Emails in respect of Service List updates; emails in respect of noticing to incorrect U.S. filers; emails in respect of revised BP claim; conference call regarding BP claim; review revised plan documents; conference calls ahead of hearing on subsequent day to address remaining matters;

Emails with respect to Service List; call with J. Robinson to discuss noticing to US claimants; call with N. MacParland with respect to ERCOT position; call with R. Thornton with respect to same; emails with respect to same; review limited guarantee and emails with respect to same; call with H. Chaiton; review letter from Paliare; call with TGF team to discuss same and ERCOT position; call with Monitor to discuss same; call with Osler to discuss same; draft responding letter; circulate same for review; call with R. Kennedy; call with R. Thornton to discuss draft letter; finalize and send same;

Apr-21-22

Prepare for and conference call with team regarding submissions for Court; prepare for and attend Court regarding stay extension and US proceeding; review and respond to emails regarding factum; telephone call with R. Kennedy regarding submissions and review and respond to emails regarding same; review and respond to emails with US counsel regarding US proceeding;

- Apr-26-22 Prepare for conference call with Oslers regarding status of negotiations; telephone call with M. Wasserman regarding superior offer issues; telephone call with P. Bishop regarding same; review and respond to emails regarding same; review and respond to emails regarding information statement regarding draft documentation; review and respond to emails regarding draft report;
- Review and respond to email correspondence; attend call with Osler and FTI;
- Comments on Information Statement, PSA, RTS and BCL; attend update call with Monitor and Oslers;
- Weekly update call with Osler team; emails in respect of [REDACTED]; review Information Statement;
- Review draft leave to appeal responding factum; circulate comments on same; attend Osler update call; begin review of draft Carter affidavit;
- Apr-27-22 Prepare for and conference call with M. Wasserman and client regarding plan and report issues; review and respond to emails regarding valuations; review and respond to emails with client regarding discussions with banks; review of draft affidavits and consider comments on same; review and respond to emails regarding same;
- Review and respond to email correspondence; emails regarding transcripts; comments and emails on information statement; telephone call with R. Bengino regarding same;
- Review motion materials in depth;
- Attend conference call to discuss Lumi platform; emails with respect to transcript for US court; emails with respect to draft affidavit;
- Apr-28-22 Review and respond to emails regarding draft motion materials; prepare for and attend conference call with bank counsel and Financial Advisor; review and respond to email regarding same; review and respond to emails regarding transcript issues; review of ERCOT submissions; review and respond to emails regarding same;
- Emails regarding Agreement with IESO; emails regarding confidentiality agreement; further emails regarding US Court hearing; emails regarding transcript issues; review of liquidation analysis;
- Comments on liquidation analysis;
- Review of Carter Affidavit; emails with respect to Caiger Affidavit; emails with respect to Canadian transcript for US court; review revised Notice to Claimants and emails with respect to same; review of Caiger affidavit; emails with respect to US court hearing; review summary of key liquidation analysis considerations; emails with respect to same;
- Apr-29-22 Review of information statement; review of slide deck regarding liquidation scenario; prepare for and attend telephone call with Oslers regarding status of matter; telephone call with court regarding hearing schedule; review and respond to emails regarding same;
- Prepare for and attend update call with DIP Advisors; attend update call with Osler; review of Caiger affidavit; review of Carter affidavit; emails from and to S. Irving;
- Attend update call with Monitor and Oslers;

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

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

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

Applicants

**AFFIDAVIT OF JOHN F. HIGGINS
Sworn May 11, 2022**

**I, JOHN F. HIGGINS, of the City of Houston, in the State of Texas, in the United States of
America, MAKE OATH AND SAY AS FOLLOWS:**

1. I am an attorney licensed to practice law in the States of Texas and New York and a partner at Porter Hedges LLP (“PH”). I am the United States bankruptcy counsel for FTI Consulting Canada Inc., the Court-appointed monitor (the “Monitor”) of the Applicants and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as **Exhibit “A”** are copies of the invoices issued to the Monitor by PH for fees and disbursements incurred by PH through the course of these proceedings between November 1, 2021 through to May 7, 2022, which have been redacted in certain instances to maintain confidentiality where necessary.

3. Attached hereto as **Exhibit “B”** is a schedule summarizing each invoice in Exhibit “A”, the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

4. Attached hereto as **Exhibit “C”** is a schedule summarizing the billing rates of each of the attorneys at PH who acted for the Monitor.

5. To the best of my knowledge, the rates charged by PH throughout the course of these proceedings are comparable to the rates charged by other law firms in the Houston market for the provision of similar services.

6. The hourly billing rates outlined in **Exhibit “C”** to this affidavit are comparable to the hourly rates charged by PH for services rendered in relation to similar proceedings.

7. I make this affidavit in support of a motion for, *inter alia*, approval of the fees and disbursements of the Monitor's counsel.

JOHN F. HIGGINS

STATE OF TEXAS
COUNTY OF HARRIS

Sworn to and subscribed before me on the 11th day of May 2022, by John F. Higgins.

Notary Public Signature

(Personalized Seal)



This is Exhibit "A" referred to in the Affidavit of John F. Higgins sworn to and subscribed before me on the 11th day of May 2022, by John F. Higgins.

(Personalized Seal)



Notary Public Signature



PORTER HEDGES LLP

A REGISTERED LIMITED LIABILITY PARTNERSHIP

DEPT. 510
P.O. BOX 4346
HOUSTON, TEXAS 77210-4346

TELEPHONE (713) 226-6000
TELECOPIER (713) 228-1331

Page 4
Inv# 535055
Date 05/11/22
016919-0001
JOHN F. HIGGINS

TAX ID# 74-2174193

Date	Tkpr	Description	Hours	Amount
04/14/22	JFH	Email R. Thornton, P. Bishop, R. Nicholson and S. Irving regarding motion for authority, reports and stay extension; email E. Paplawki; review motion records; email M. Webb regarding same.	0.80	692.00
04/15/22	JFH	Review docket; email regarding fee statement; email regarding hearing.	0.40	346.00
04/17/22	MLW	[ERCOT adversary] Review docket and update J. Higgins.	0.20	67.00
04/18/22	JFH	Conference call with FTI and TGF teams regarding plan, hearing, documents and claims; email regarding docket; email S. Irving regarding factum and review same and email regarding revisions; review Ninth Monitor Report.	0.80	692.00
04/19/22	JFH	Email R. Nicholson regarding transcript; review Factum and email regarding same; email R. Nicholson and M. Webb regarding hearing.	0.50	432.50
04/21/22	MNY	Prepare for and attend CCAA hearing regarding stay extension and motion regarding chapter 15 cases (1.3); review letter from ERCOT to monitor (.4).	1.70	960.50
04/21/22	MLW	[ERCOT adversary] Forward motions to intervene to J. Higgins.	0.10	33.50
04/21/22	JFH	Attend hearing on motion to extend stay and motion to authorize prosecute; email regarding same; email R. Thornton, P. Bishop and E. Bookstaff regarding ERCOT adversary and Calpine; review motion to intervene; email E. Paplawski regarding order.	1.80	1,557.00
04/22/22	JFH	Conference call with Osler, TGF and FTI teams regarding plan, claims, motions and hearing.	0.50	432.50
04/25/22	MLW	[ERCOT adversary] Check docket and update J. Higgins.	0.30	100.50

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Page 5
Inv# 535055
Date 05/11/22
016919-0001
JOHN F. HIGGINS

TAX ID# 74-2174193

Date	Tkpr	Description	Hours	Amount
04/25/22	JFH	Conference call with TGF and FTI teams regarding hearing, transcript, plan and issues; review ERCOT docket.	0.60	519.00
04/26/22	JFH	Conference call regarding plan documents, affidavit, claims, stay and issues.	0.70	605.50
04/27/22	JFH	Email R. Thornton and R. Nicholson regarding motion to dismiss hearing and transcript.	0.40	346.00
04/28/22	JFH	Email R. Nicholson and J. Dacks regarding hearing; email R. Thornton, R. Nicholson, S. Irving and P. Bishop regarding hearings; review transcript; email regarding motion to dismiss and briefing.	0.60	519.00
04/29/22	JFH	Email regarding Factum and review same; conference call with FTI, Osler and TGF teams regarding plan, tax claims, hearings and pending matters.	0.60	519.00
Total Services			25.30	\$19,138.50

Timekeeper Summary

<u>Attorney/Legal Assistant</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
JFH John F. Higgins	Partner	18.60	865.00	16,089.00
MNY Megan N. Young-John	Associate	3.50	565.00	1,977.50
MLW Mitzie L. Webb	Paralegal	3.20	335.00	1,072.00

Disbursements Summary

Description	Value
Computer Assisted Legal Research	6.50
Service Fee	80.40
Total Disbursements	\$86.90

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Page 2
Inv# 535056
Date 05/11/22
016919-0001
JOHN F. HIGGINS

TAX ID# 74-2174193

For professional services rendered and related expenses incurred in the above-referenced matter through May 2022, as follows:

Date	Tkpr	Description	Hours	Amount
05/01/22	MLW	[ERCOT adversary] Review docket and update J. Higgins.	0.10	33.50
05/02/22	JFH	Conference call with FTI and TGF regarding plan, hearing and issues; review plan, plan documents and orders.	1.60	1,384.00
05/03/22	JFH	Conference call with Osler, FTI and TGF regarding plan, hearing, press release and claims; email regarding fee affidavits; email R. Nicholson regarding plan.	0.70	605.50
05/04/22	JFH	Email R. Nicholson regarding plan and tort claimants.	0.30	259.50
05/05/22	JFH	Email P. Fesharaki regarding order to pursue claims and review same.	0.30	259.50
05/06/22	JFH	Conference call with Osler, FTI and TGF regarding plan, ERCOT and pending matters.	0.50	432.50
Total Services			3.50	\$2,974.50

Timekeeper Summary

<u>Attorney/Legal Assistant</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
JFH John F. Higgins	Partner	3.40	865.00	2,941.00
MLW Mitzie L. Webb	Paralegal	0.10	335.00	33.50
Total Disbursements				\$0.00

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JUST ENERGY GROUP INC. et al.** (each, an “**Applicant**”, and collectively, the “**Applicants**”)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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

Thornton Grout Finnigan LLP

TD West Tower, Toronto-Dominion Centre
100 Wellington Street West, Suite 3200
Toronto, ON M5K 1K7

Tel: (416) 304-1616 / Fax: (416) 304-1313

Robert I. Thornton (LSO# 24266B)

Email: rthornton@tgf.ca / Tel: (416) 304-0560

Rebecca L. Kennedy (LSO# 61146S)

Email: rkennedy@tgf.ca / Tel: (416) 304-0603

Rachel Nicholson (LSO# 68348V)

Email: rnicholson@tgf.ca / Tel: (416) 304-1153

Puya Fesharaki (LSO# 70588L)

Email: pfesharaki@tgf.ca / Tel: (416) 304-7979

Lawyers for the Court-appointed Monitor,
FTI Consulting Canada Inc.

*THIS IS EXHIBIT "CC" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Russell", enclosed within a thin black rectangular border.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

Osler, Hoskin & Harcourt LLP
 Box 50, 1 First Canadian Place
 Toronto, Ontario, Canada M5X 1B8
 416.362.2111 MAIN
 416.862.6666 FACSIMILE

OSLER

Toronto

September 27, 2021

Marc S. Wasserman
 Direct Dial: 416.862.4908
 MWasserman@osler.com
 Our Matter Number: 1218715

Montréal

WITHOUT PREJUDICE

Calgary

Sent By Email (drosenfeld@kmlaw.ca)

Ottawa

David Rosenfeld
 Koskie Minsky LLP
 900-20 Queen Street West
 Toronto, ON M5H 3R3

Vancouver

New York

Dear Mr. Rosenfeld:

Omarali v Just Energy Group. et al - Court File No. CV-15-52749300 CP

We are in receipt of your letter dated September 21, 2021, in respect of the above-noted matter (the “**Action**”), in which you claim that class members are entitled to certain insurance policies relating to directors and request copies of the policies “as soon as possible”.

As you are aware, the Action is stayed by operation of an initial order (as amended, the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) dated March 9, 2021 in connection with its grant of creditor protection to Just Energy Group Inc. and certain of its affiliates (together, the “**Just Energy Group**”) pursuant to the *Companies’ Creditors Arrangement Act* (“**CCA**”) and such proceedings, the “**CCA Proceedings**”). Given that the Action is stayed and will be dealt with in the court-approved CCA Claims Process, and for the reasons set out below, there is no basis for the Just Energy Group to disclose its insurance policies at this time.

Subrule 31.06(4) of the *Rules of Civil Procedure*, upon which you rely for the requested disclosure, applies to a party on examination for discovery in civil litigation. The parties are not presently engaged in examinations for discovery, nor can the Action proceed by way of civil litigation while the stay is in effect. As such, subrule 31.06(4) does not apply to the present circumstances.

In addition, we note:

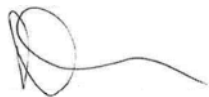
- (a) The directors of the Just Energy Group are not named as defendants to the Action, nor does the Action plead that the directors and officers of the Just Energy Group are personally liable to the class members in any respect.
- (b) The Action does not plead a remedy in respect of which the directors of the Just Energy Group could be found personally liable. For example, the

Action requests monetary relief in the form of “damages”, which the Supreme Court recently confirmed is a “distinct legal concept” from severance or wages (see: *Matthews v. Ocean Nutrition Canada Ltd.*, 2020 SCC 26). In addition, and in any event, the requirements for director liability – whether under section 81(1)(a) of the ESA or under applicable business corporations legislation – do not appear to have been met; and

- (c) Any potential new claims attempted to be brought against the Just Energy Group’s directors by class members in respect of the claims contained in the Action would appear to be barred by applicable limitations periods, including the operation of the *Limitations Act, 2002*.

While we are not prepared to disclose insurance policies at this time, we note that the Claims Procedure Order dated September 15, 2021, in the CCAA Proceedings provides for a streamlined method for filing a claim with respect to the Action by allowing such a claim to be filed by a representative plaintiff. Should your firm file a claim with respect to the Action in the Claims Process, the Just Energy Group, in consultation with the Monitor, will deal with such claim in accordance with the Claims Procedure Order.

Regards,



Osler, Hoskin & Harcourt LLP
per: Marc Wasserman

- c. *FTI Consulting Canada Inc. – Paul Bishop*
Thornton Grout Finnigan – Bob Thornton
Faskens – Paul Martin
Just Energy Group Inc.
Osler – J. Dacks and S. Poysa
Kirkland – B. Schartz

*THIS IS EXHIBIT "DD" REFERRED TO IN THE
AFFIDAVIT OF VLAD ANDREI CALINA
AFFIRMED BEFORE ME THIS 26th DAY OF MAY, 2022*

A handwritten signature in black ink, appearing to read "D. Rowland". The signature is written in a cursive style with a small star or mark at the end of the last letter.

A COMMISSION FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY**

JUSTICE MATTERS

October 8, 2021

David Rosenfeld

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BY EMAILmwasserman@osler.com; rthornton@tgf.ca

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Toronto ON M5X 1B8

Mr. Robert Thornton
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Toronto ON M5K 1K8

Dear Counsel:

**Re: *Omarali v. Just Energy Group Inc. et al.*
Court File No. CV-15-52749300 CP
Class Members' Claims in the Just Energy CCAA Proceeding**

We write in response to Mr. Wasserman's letter of September 27, 2021.

The class proceeding seeks recovery of minimum wage, overtime, holiday and vacation pay for class members in accordance with the *Employment Standards Act, 2002* – clearly wages. Accordingly, the class members' claims would engage directors' liability.

Class members' claims against directors are not out of time. The conditions that give rise to liability against directors have yet to crystallize. As such, the limitation periods applicable to such claims have not yet commenced.

We will file a claim on behalf of class members in the CCAA Claims Process. Our expectation is that class members will be unable to recover the full amount of their claims against Just Energy in the claims process. In such circumstances, our proof of claim will also include claims on behalf of the class against directors for unpaid wages.

Given that we expect that claims against Just Energy's directors are sought to be extinguished in this CCAA process, it is fair and reasonable that our client be granted the opportunity to review the applicable insurance policies at this juncture. We ask again to be provided with such insurance policies.



We welcome the opportunity to discuss a resolution to the dispute about the class members' entitlement after filing their claims in the claims process.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read 'D. Rosenfeld', with a small star-like mark at the end of the signature.

David Rosenfeld
DR/ls

C Jeremy Dacks – Osler, Hoskin & Harcourt LLP (by email)
 James Harnum, Aryan Ziaie – Koskie Minsky LLP (by email)

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.*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF VLAD ANDREI CALINA
(AFFIRMED MAY 26, 2022)**

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**Counsel for Haidar Omarali in his capacity as
Representative Plaintiff Omarali v. Just Energy**

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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

**RESPONDING MOTION RECORD
OF HAIDAR OMARALI
IN HIS CAPACITY AS REPRESENTATIVE PLAINTIFF in
OMARALI v. JUST ENERGY
(Motion for Authorization Order, Meetings Order,
Stay Extension and Other Relief)
(returnable June 7, 2022)**

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Representative Plaintiff *Omarali v. Just Energy***