

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

Just Energy Group Inc. et al.

**SUPPLEMENT TO THE FOURTH REPORT OF
FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS COURT-APPOINTED MONITOR**

November 9, 2021

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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**”)

SUPPLEMENT TO THE FOURTH REPORT OF THE MONITOR

INTRODUCTION

1. Pursuant to an Order (as amended and restated, 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 (together with Just Energy, the “**Applicants**”) and certain partnerships listed on Schedule “A” of the Initial Order (collectively, the “**Just Energy Entities**”) 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**”). Under the Initial

Order, FTI Consulting Canada Inc. was appointed as Monitor of the Just Energy Entities (in such capacity, the “**Monitor**”).

2. This report is supplementary to and should be read in conjunction with the Fourth Report of the Monitor dated November 5, 2021 (the “**Fourth Report**”) and the Affidavit of Michael Carter sworn November 8, 2021 (the “**Carter Affidavit**”).
3. All references to monetary amounts in this report are in Canadian dollars unless otherwise noted. Any capitalized terms used but not defined herein shall have the meanings given to them in the Fourth Report.

PURPOSE

4. In the Fourth Report, the Monitor described a potential transaction whereby the Just Energy Entities could monetize an 8% equity interest held by Just Management Corporation (“**JMC**”), a wholly-owned subsidiary of Just Energy, in ecobee Inc. (“**ecobee**”), an arm’s length private company. It is contemplated that all of the shareholders of ecobee will sell their interests to a subsidiary of Generac Holdings Inc. (“**Generac**”) pursuant to a transaction (the “**Transaction**”) to be affected under a *Canada Business Corporations Act*, RSC 1985, c C-44 (“**CBCA**”) plan of arrangement (the “**CBCA Arrangement**”).
5. Since the date of the Fourth Report, ecobee has obtained an Interim Order on November 8, 2021 with respect to the proposed CBCA Arrangement. The Monitor understands that a hearing has been scheduled for November 26, 2021 for a Final Order approving the CBCA Arrangement. A special meeting of ecobee’s shareholders to vote in respect of the CBCA Arrangement has also been scheduled for November 22, 2021. A copy of the Interim Order is attached as Exhibit “H” to the Carter Affidavit, and a copy of the plan of arrangement is attached as Exhibit “I” to the Carter Affidavit.
6. The Just Energy Entities support the Transaction. The relief sought by the Applicants in their proposed Order (the “**Vesting Order**”) will facilitate the consummation of the Transaction and the monetization of the Just Energy Entities’ equity interest in ecobee. Specifically, the Vesting Order:

- (a) authorizes and empowers JMC to enter into the Support and Voting Agreement dated November 1, 2021 (the “**Support Agreement**”) relating to the Arrangement Agreement (the “**Arrangement Agreement**”) between ecobee, Shareholder Representative Services LLC, in its capacity as representative for the shareholders (the “**Shareholder Representative**”), and the Generac subsidiaries, 13462234 Canada Inc. (“**Purchaser**”) and Generac Power Systems, Inc.;
 - (b) authorizes and empowers the Just Energy Entities to enter into the Wind-Up and Dissolution Steps (as defined below) prior to the closing of the Transaction, and ordering that the completion of the Wind-Up and Dissolution Steps is deemed to be in compliance with sections 34 and 38 of the CBCA;
 - (c) authorizes and directs the Just Energy Entities to take all steps necessary to effect the dissolution of JMC in accordance with the Wind-Up and Dissolution Steps;
 - (d) authorizes Just Energy to sell and transfer all right, title and interest in and to the ecobee shares held by it, following the completion of the Wind-Up and Dissolution Steps, to the Purchaser on closing of the Transaction, free and clear of all claims and encumbrances; and
 - (e) authorizes the Just Energy Entities, in consultation with the Monitor, to sell the Generac common stock (NYSE: GNRC) (the “**Generac Common Stock**”) received by it in connection with the Transaction to a third-party purchaser free and clear of all claims and encumbrances, at any time following closing of the Transaction.
7. The purpose of this supplementary report to the Fourth Report (the “**Supplementary Report**”) is to provide the Court with background and information relating to the Transaction, the relief sought by the Applicants in connection therewith under the Vesting Order, and the Monitor’s recommendations with respect to the foregoing.

TERMS OF REFERENCE AND DISCLAIMER

8. In preparing this Supplementary 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**”).

9. Except as otherwise described in this Supplementary 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 Supplementary Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
10. Future-oriented financial information reported in or relied on in preparing this Supplementary Report is based on assumptions regarding future events. Actual results will vary from these forecasts and such variations may be material.
11. This Supplementary Report has been prepared for the purpose stated above and should not be relied on for any other purpose.

THE ECOBEE INVESTMENT

Investment Background

12. ecobee is a private federal corporation headquartered in Toronto, Ontario. It is engaged in the business of developing and selling smart home devices and related services to residential and commercial customers across North America.
13. In its most recently reported fiscal quarter, ecobee recorded net revenue of US\$41.5 million and EBITDA of US\$4.6 million. ecobee’s smart thermostats are used in approximately 2.19 million homes across North America.

14. Previously, the Just Energy Entities were involved in cross-selling and marketing ecobee products to their customers in Ontario and Texas as part of their bundled product offerings. However, in or about 2019, the Just Energy Entities discontinued this practice.
15. The Just Energy Entities' initial investment in ecobee was in 2012. Over subsequent years, the Just Energy Entities participated in additional capital raises. However, the Just Energy Entities have declined to participate in ecobee's most recent capital raising rounds, having determined that the ecobee interest is a non-core asset for the Just Energy Entities.
16. Currently, JMC holds an 8% equity interest in ecobee on a fully diluted basis comprised of approximately 2.34% of the Common Shares, 19.33% of the Class A Preferred Shares and 13.48% of the Class B Preferred Shares, as all such terms are defined in the Seventh Amended and Restated Unanimous Shareholder Agreement dated April 24, 2018 (the "USA") to which JMC is a party. As at June 30, 2021, the fair value of JMC's investment in ecobee as recorded in Just Energy's consolidated financial statements was \$32.9 million. The Monitor understands the fair value was determined directly from transacted/quoted prices of identical assets in accordance with International Financial Reporting Standards. A copy of the USA is attached as Exhibit "C" to the Carter Affidavit.

ecobee Unanimous Shareholder Agreement

17. Among other things, the USA governs the composition of the ecobee board of directors (the "**ecobee Board**"). Currently, Mr. Jonah Davids, Executive Vice President, General Counsel and Corporate Secretary of Just Energy, sits on the ecobee Board as JMC's nominee under the USA.
18. Article 7.5 of the USA addresses drag-along rights. Specifically, if ecobee receives a qualifying offer from a third party that it wishes to accept, Article 7.5 provides that ecobee is entitled to require all shareholders (including JMC) on 10 days' prior written notice to sell their shares to the third party for the amount set forth upon the qualifying offer being:
 - (a) approved by the ecobee Board;
 - (b) approved by a majority of the votes cast by holders of Common Shares at a meeting of Common Shareholders,

- (c) approved by a majority of the Class B Preferred Shares and Class C Preferred Shares, voting together on an as-converted basis; and
- (d) an offer that provides a specified return to Class C Investors (as defined in the USA).

ecobee Monetization Efforts

19. The Just Energy Entities previously sought to monetize JMC's equity interest in ecobee and retained National Bank Financial Inc. as investment advisor in January 2019. These efforts were unsuccessful, and the engagement with National Bank Financial Inc. was terminated by Just Energy in November 2020.
20. In March 2021, the ecobee Board began exploring strategic alternatives (the "**Strategic Process**") for the company with the assistance of a financial advisor, BofA Securities, Inc. These alternatives included potential financings with private equity firms, a potential sale to a strategic acquirer, as well as the potential acquisition by a U.S.-based Special Purpose Acquisition Fund (a "**SPAC**").
21. The Monitor understands that the ecobee Board initially favoured a transaction with a SPAC (the "**Potential SPAC Transaction**"). The Monitor further understands that the Potential SPAC Transaction initially valued ecobee at US\$1 billion, but the valuation deteriorated to US\$750 million amid a failing SPAC market. There were other risk factors and limitations relating to the Potential SPAC Transaction, including limited liquidity for ecobee shareholders who would be compensated principally with stock of the U.S. SPAC. The Monitor understands that the ecobee Board abandoned pursuit of the Potential SPAC Transaction because of these valuation, liquidity and other concerns.
22. Generac was identified as a potential acquirer pursuant to the Strategic Process. After extensive negotiations, the ecobee Board decided in August 2021 to negotiate exclusively with Generac to explore the Transaction. The Monitor understands that there is unanimous support by the ecobee Board and all senior officers of ecobee for the Arrangement Agreement and the Transaction.

THE GENERAC TRANSACTION

The Transaction

23. On November 1, 2021, Generac and Just Energy each issued press releases announcing the Transaction.
24. The Transaction is valued at up to US\$770 million, contingent on the achievement of certain performance targets. At closing based on current estimates, the Purchaser will pay the ecobee shareholders US\$200 million in cash, subject to customary adjustments and escrow/indemnity holdbacks, together with approximately US\$450 million in Generac Common Stock.
25. Additionally, upon achievement of certain post-closing financial performance targets set out in the Arrangement Agreement in respect of the fiscal years ending June 30, 2022 and 2023, the ecobee shareholders may receive an “earnout” of up to an aggregate of US\$120 million in additional shares of Generac Common Stock.
26. The Monitor understands that the Arrangement Agreement includes customary representations and warranties given by both ecobee and the Purchaser, and customary indemnification obligations on the part of ecobee, the Purchaser and the ecobee shareholders in respect of any breaches or non-fulfilment of the representations, warranties, covenants and obligations under the Arrangement Agreement.
27. At closing and following the proposed Wind-Up and Dissolution Steps (as defined below), Just Energy anticipates receiving approximately \$61 million in respect of the Transaction, comprised of approximately \$18 million cash and \$43 million of Generac Common Stock, subject to customary adjustments and escrow/indemnity holdbacks. The Just Energy Entities can receive up to an additional approximate \$10 million in Generac Common Stock over calendar years 2022 and 2023, subject to customary adjustments and indemnity/escrow holdback amounts and provided that certain performance targets are achieved by ecobee.

The Support Agreement

28. The Monitor understands that the majority of ecobee's shareholders have already entered into Support Agreements, whereby each such shareholder has agreed to support and to be bound by the Arrangement Agreement and to vote in favour of the CBCA Arrangement. A copy of the form of Support Agreement that JMC intends to execute is attached as Exhibit "J" to the Carter Affidavit (with supporting shareholder names redacted).
29. The Support Agreement contains customary representations, warranties and indemnification obligations on the part of the signing shareholder. The Monitor finds such obligations to be commercially reasonable in the circumstances when compared to other transactions of similar scale and complexity.
30. Given the restrictions in the Initial Order against any material refinancing, restructuring, sale or reorganization involving the Just Energy Entities, the Monitor understands that it was expressly agreed by the parties and acknowledged that JMC's execution of the Support Agreement would be conditional on approval by the Court. Separately, the Purchaser, through its counsel, has confirmed to Just Energy in writing (the "**Consent**") that the Purchaser consents to (i) JMC transferring the ecobee Shares to Just Energy at any time at least five Business Days prior to the Closing upon Just Energy assuming all of the obligations of JMC under the Support Agreement, notwithstanding Section 1.4(c) of the Support Agreement, and (ii) Just Energy making such public announcements, filings and disclosures as it reasonably determines are required or advisable in connection with its obligations as a debtor in these CCAA Proceedings, notwithstanding Section 1.4(b) of the Support Agreement. A copy of the Consent is attached as Exhibit "K" to the Carter Affidavit.
31. The Monitor supports the sale of the Just Energy Entities' ecobee interest pursuant to the Transaction, and the entering into of the Support Agreement by JMC for the following reasons:
 - (a) the Just Energy Entities' ecobee equity interest is a non-core asset that the Just Energy Entities have been actively trying to sell for two years before these CCAA Proceedings without success;

- (b) the ecobee equity interest does not produce any cash flow for Just Energy, such that holding onto such interest does not have any ameliorative benefits;
- (c) the value of approximately \$61 million ascribed to JMC's equity interest under the Transaction (excluding potential earnout payments) exceeds the reported fair value of such interest by approximately \$28.1 million, as determined in accordance with accounting standards;
- (d) the consideration under the Transaction, consisting of cash and Generac Common Stock, is liquid and can be utilized as required by the Just Energy Entities to satisfy their cash needs. Generac Common Stock trades on the NYSE stock exchange with substantial daily volumes, and the Arrangement Agreement does not restrict any party receiving such Generac Common Stock from selling same subsequent to the Transaction closing. Under the proposed Vesting Order, Just Energy is seeking the authority to sell the Generac Common Stock received by it, in consultation with the Monitor, free and clear of all encumbrances at an opportune time to enable Just Energy to monetize the sale proceeds. The Monitor will consult with Just Energy's management regarding the present versus future utility of a sale of the Generac Common Stock and the opportune time to sell such shares, and supports granting the Just Energy Entities the authority to sell and vest such Generac Common Stock at their discretion;
- (e) the non-competition and non-solicitation provisions in the Support Agreement do not apply to Just Energy nor its director nominee, allowing Just Energy to conduct its business in an unencumbered manner;
- (f) the ecobee Board supports the Transaction;
- (g) the Just Energy board of directors supports the Transaction;
- (h) the Monitor understands that the majority of ecobee's shareholders support the Transaction and have entered into Support Agreements;
- (i) the Monitor understands that the DIP Lenders support the Transaction; and
- (j) the Monitor understands that the drag-along provisions at section 7.5 of the USA would be engaged and applied to the Just Energy Entities' 8% equity interest in

ecobee if the Just Energy Entities and its Board had decided not to support the Transaction. This would result in the Just Energy Entities' equity interest in ecobee being transferred to the Purchaser under the USA regardless of its support for the Transaction. Accordingly, the Monitor understands the requisite support to pass the Arrangement Agreement has also already been obtained to facilitate the Transaction.

THE WIND-UP AND DISSOLUTION STEPS

32. The Just Energy Entities intend to enter into a series of ordinary course reorganization steps in advance of the closing of the Transaction to transfer the assets and liabilities currently held by JMC to Just Energy, including JMC's interest in the ecobee shares, to allow those shares to then be sold to the Purchaser by Just Energy (the "**Wind-Up and Dissolution Steps**"). If completed as proposed, the Wind-Up and Dissolution Steps will save the Just Energy Entities (and in turn their stakeholders) from tax liability of approximately \$6.6 million that would otherwise result from the sale of the ecobee shares by JMC. The tax savings are a result of Just Energy having losses available to setoff the gain on the sale of the ecobee shares.
33. The specific Wind-Up and Dissolution Steps are described in detail in the Carter Affidavit. The Monitor understands that the Wind-Up and Dissolution Steps shall not infringe on any provision under any governing agreement. All of JMC's obligations under its financing and other agreements are cross-guaranteed and cross-collateralized by other Just Energy Entities such that the Transaction shall not prejudice any creditor or any other stakeholder of the Just Energy Entities. The Monitor understands that the ecobee interest is the only asset held by JMC other than an interest in a dormant partnership with nil value. In addition, the Monitor is not aware of any Proofs of Claim being filed in the Claims Process against JMC by the Claims Bar Date of November 1, 2021 apart from those directly related to the known secured creditors of the Just Energy Entities. The assets that would otherwise be available to satisfy JMC's liabilities will continue to exist in the hands of Just Energy, which is a co-obligor with JMC on the same liabilities for which JMC is responsible.

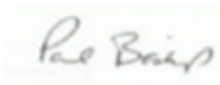
34. The proposed Vesting Order deems the Wind-Up and Dissolution steps to comply with section 34 and 38 of the CBCA in order, among other things, to provide protection to the directors of JMC against any future allegation regarding potential technical non-compliance with these provisions.
35. The Monitor also understands that the ecobee Board has approved the Wind-Up and Dissolution Steps under the USA.
36. For all of the foregoing reasons, the Monitor supports granting the Just Energy Entities the authority under the Vesting Order to effect the Wind-Up and Dissolution Steps.

CONCLUSION

37. The Monitor is of the view that the relief requested by the Applicants is necessary, reasonable and justified in the circumstances.
38. Accordingly, the Monitor respectfully recommends that the Vesting Order and requested relief therein be granted.

The Monitor respectfully submits to the Court this Supplementary Report dated this 9th day of November, 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**”)

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COMMERCIAL LIST**

Proceedings commenced at Toronto

**SUPPLEMENT TO FOURTH REPORT OF THE
MONITOR**

Thornton Grout Finnigan LLP

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 Bengino (LSO# 68348V)

Email: rbengino@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.