

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

Just Energy Group Inc. et al.

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

June 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., 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 TENTH 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. Upon application by Just Energy, in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”), the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”) granted the Final Recognition Order on April 2, 2021 under Chapter 15 of the United States Bankruptcy Code, which, among other things, gave full force and effect to the Initial Order in the United States.
3. 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**”).
4. This report is supplementary to and should be read in conjunction with the Tenth Report of the Monitor dated May 18, 2022 (the “**Tenth Report**”).
5. 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 Tenth Report.
6. Pursuant to the motion returnable on June 7, 2022 (the “**Meetings Order Motion**”), the Just Energy Entities are seeking the Meetings Order and the Authorization Order. In response to the Meetings Order Motion, responding motion records were filed by (i) Haidar Omarali, in his capacity as representative plaintiff on behalf of a certified class (the “**Class Members**”) in *Haidar Omarali v. Just Energy Group et al.*, Court File No. CV-15-52748300CP (the “**Omarali Action**”) (the “**Omarali Motion Record**”), and (ii) Wittels McInturff Palikovic, Finkelstein Blankinship, Frei-Pearson, Garber LLP, and Shub Law Firm LLP, in their capacity as counsel to the proposed representative plaintiffs in *Donin v. Just Energy Group Inc. et al.*, Case No. 1:17-cv-05787-WFK-SJB and *Trevor Jordet v. Just Energy Solutions Inc.*, Case No. 2:18-cv-01496-MMB (together, the “**Donin/Jordet Actions**”).

PURPOSE

7. The purpose of this Supplement to the Tenth Report (the “**Supplemental Report**”) is to provide information to the Court in response to issues raised in the Omarali Motion Record and in respect of the Claims.

TERMS OF REFERENCE AND DISCLAIMER

8. In preparing this Supplemental 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 Supplemental 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 Supplemental Report in a manner that would comply with the procedures described in the *Chartered Professional Accountants of Canada Handbook*.
10. The Monitor has prepared this Supplemental Report to provide information to the Court in response to certain issues raised in the Omarali Motion Record and in support of the relief sought by the Applicants in the Meetings Order and Authorization Order. This Supplemental Report should not be relied on for any other purpose.

RESPONSES TO ISSUES RAISED IN OMARALI MOTION RECORD

11. The Omarali Motion Record includes the Affidavit of Vlad Andrei Calina affirmed May 26, 2022 (the “**Calina Affidavit**”). The Calina Affidavit suggests that inadequate disclosures were made by the Monitor in respect of (i) Texas House Bill 4492 (“**HB**

4492”) and anticipated recoveries by the Just Energy Entities, (ii) the timing of the ERCOT Litigation (as defined below) and anticipated recoveries, and (iii) certain insurance policies for Just Energy’s directors as requested.

HB 4492

12. The Monitor provided an initial update to the Court and stakeholders in respect of HB 4492 in the Monitor’s Third Report to the Court dated September 8, 2021. The Monitor noted that the Governor of Texas signed HB 4492 on June 16, 2021, 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. The Monitor also noted that the total amount that the Just Energy Entities might recover through HB 4492 was dependant on several factors.
13. In the Monitor’s Fourth Report to the Court dated November 5, 2021, the Monitor noted that the Just Energy Entities anticipated recovering at least US\$100 million of the costs from Electric Reliability Council of Texas, Inc. (“**ERCOT**”), however, such amount was dependent on several factors noted therein.
14. In the Monitor’s Fifth Report to the Court dated February 4, 2022, the Monitor noted that the Just Energy Entities’ expected recovery under HB 4492 had increased to approximately US\$147.5 million.
15. The Monitor understands that ERCOT has not provided a definitive timeline for the payment of HB 4492 recoveries; however, based on discussions with the Just Energy Entities, the Monitor understands that HB 4492 recoveries are anticipated to be received by the Just Energy Entities during Summer 2022 prior to implementation of the proposed Plan of Compromise and Arrangement dated May 26, 2022 (as may be amended from time to time, the “**Plan**”), subject to any unforeseen delays.
16. The HB 4492 recoveries to the Just Energy Entities will constitute Cash on Hand under the Plan and will provide some of the funds necessary to make the cash distributions provided for under the Plan. One of the conditions precedent to implementation of the Plan (as described in the Tenth Report) is that the New Equity Offering Proceeds and

Cash on Hand shall be sufficient to pay the amounts to be distributed and reserved for under the Plan.

17. In summary, the recoveries under HB 4492 have been disclosed on a timely basis and are anticipated to be fully used under the Plan.

ERCOT Litigation

18. In the Monitor's Second Report to the Court dated May 21, 2021 (the "**Second Report**"), the Monitor noted that the Just Energy Entities had disputed the resettlement payments that the Just Energy Entities were required to pay to ERCOT as a result of the inflated prices during the Texas weather event. The Monitor also noted that ERCOT had dismissed one of the disputes filed by the Just Energy Entities, which triggered an alternative dispute resolution process.
19. In the Monitor's Eighth Report to the Court dated April 7, 2022, the Monitor noted that the Just Energy Entities had commenced litigation against ERCOT and the Public Utility Commission of Texas (the "**PUCT**") on November 12, 2021, in an effort to recover payments made by various Just Energy Entities to ERCOT for certain invoices relating to the Texas weather event in February 2021 (the "**ERCOT Litigation**"). The claim against the PUCT was dismissed by the U.S. Court. Further, the Monitor noted that it intends to be actively involved in supporting the ERCOT Litigation.
20. The ERCOT Litigation was the subject of the Applicants' recent motion to the Court, in which the Applicants sought and obtained an order authorizing the Foreign Representative to pursue the claims against ERCOT in the ERCOT Litigation pursuant to section 36.1 of the CCAA. Stakeholders were provided with notice of such motion and could have raised any questions or concerns regarding the ERCOT Litigation at such time.
21. In the Monitor's Ninth Report to the Court dated April 18, 2022, the Monitor noted that, in consultation with its Canadian and U.S. legal counsel, it is of the view that the Plaintiffs' claim has merit and that potential recoveries to the Just Energy Entities may result from the ERCOT Litigation, which justify the steps taken.

22. As with all litigation, the timeline to resolution and likelihood of success is unknown. At this juncture, ERCOT has moved to dismiss the ERCOT Litigation, and the continuation of such dismissal motion has been scheduled for June 8, 2022. Recoveries from such litigation, if any, could take years to realize. Accordingly, it is anticipated that the Plan will be implemented prior to the resolution of the ERCOT Litigation. The costs, risks and recovery, if any, in respect of the ERCOT Litigation following Plan implementation (which cannot be quantified at present and could be significant) will be borne by the restructured Just Energy Entities.

Insurance Policies

23. The Calina Affidavit also states that despite a request by counsel to the Class Members for copies of any applicable insurance policies for Just Energy’s directors responsive to a claim by Class Members, no such policies were provided.
24. As set out in Exhibit “CC” to the Calina Affidavit, the Just Energy Entities took the position that (i) such request amounted to discovery, which was not in effect at such time, and (ii) the claim against Just Energy’s directors was not valid given that the directors were not named in the initial action commenced by the Class Members, and the directors could not be found personally liable for the claims pled. Accordingly, the Just Energy Entities advised counsel to the Class Members that they were not prepared to produce the requested insurance policies.
25. Pursuant to section 40 of the Initial Order, the Monitor is prohibited from providing information to creditors that the Just Energy Entities advise is confidential, unless otherwise directed by the Court or on such terms as the Monitor and Applicants may agree. Just Energy advised the Monitor that the policies were confidential. Accordingly, such information was not provided to counsel to the Class Members.

INFORMATION ON THE CLAIMS AND VOTING

26. The Plan and Meetings Order provide that the representative plaintiff in the Omarali Action is entitled to one vote in the amount of \$1 as such Claims are too remote and speculative to be assessed and admitted for voting purposes. The Plan and Meetings

Order provide similar treatment for the proposed representative plaintiffs in the Donin/Jordet Actions.

27. The Calina Affidavit provides that there are approximately 7,723 Class Members. Not including those Claimants that have filed contingent litigation claims, less than 2,200 unique claimants have filed a Proof of Claim or received a Statement of Negative Notice Claim in the Claims Procedure (which, for greater certainty, includes the Term Loan Lenders).¹ Further, based on the Proofs of Claim filed to date, less than 35 claimants have a De Minimis Claim (i.e., Claims less than \$10).²
28. While the quantum of general unsecured claims that will be Accepted Claims is unknown at this time, the Just Energy Entities estimate that this will range from \$66 million to \$108 million in aggregate value.
29. Although the Monitor notes that the actual number of Class Members will not be established until the Claim is fully and finally adjudicated, granting each of the Class Members with their own vote would effectively provide a “veto” over the Plan, assuming such Class Members would vote against the Plan. The same issue and effective “veto” arises in respect of the Donin/Jordet Actions.

CONCLUSION

30. The foregoing information is provided to assist the Court in its determination of the Applicants’ motion for the Meetings Order and Authorizations Order.

¹ This amount represents the Just Energy Entities’ best estimate, in consultation with the Monitor, as at the date of the Tenth Report and includes unique claimants against one or more of the Just Energy Entities, but excludes potentially duplicative Claims and Claims that have been disallowed or withdrawn.

² This amount represents the Just Energy Entities’ best estimate, in consultation with the Monitor, as at the date of the Tenth Report and is subject to change.

The Monitor respectfully submits to this Honourable Court this Supplement to the Tenth Report dated this 1st day of June, 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**”)

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Proceedings commenced at Toronto

**SUPPLEMENT TO THE TENTH REPORT OF
FTI CONSULTING CANADA INC., IN ITS
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