

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

ONTARIO

SUPERIOR COURT OF JUSTICE

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

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

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

ENDORSEMENT

MCEWEN J.

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

[2] This endorsement deals with those written submissions.

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

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

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

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

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

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

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

McEwen, J.

Released: June 23, 2022

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BETWEEN:

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

– and –

IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGMENT OF JUST ENERGY GROUP INC., JUST
ENERGY CORP., ONTARIO ENERGY COMMODITIES
INC., UNIVERSALE ENERGY CORPORATION, JUST
ENERGY FINANCE CANADA ULC, HUDSON ENERGY
CANADA CORP., JUST MANAGEMENT CORP., JUST
ENERGY FINANCE HOLDING INC., 11929747 CANADA
INC., 12175592 CANADA INC., JE SERVICES HOLDCO I
INC., JE SERVICES HOLDCO II INC., 8704104 CANADA
INC., JUST ENERGY ADVANCED SOLUTIONS CORP.,
JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS
CORP., JUST ENERGY INDIANA CORP., JUST ENERGY
MASSACHUSETTS CORP., JUST ENERGY NEW YORK
CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY,
LLC, JUST ENERGY PENNSYLVANIA CORP., JUST
ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS
INC., HUDSON ENERGY SERVICES LLC, HUDSON
ENERGY CORP., INTERACTIVE ENERGY GROUP LLC,
HUDSON PARENT HOLDINGS LLC, DRAG MARKETING
LLS, JUST ENERGY ADVANCED SOLUTIONS LLC,
FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL
HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY
MARKETING CORP., JUST ENERGY CONNECTICUT
CORP., JUST ENERGY LIMITED, JUST SOLAR
HOLDINGS CORP. and JUST ENERGY (FINANCE)
HUNGARY ZRT.

Applicants

ENDORSEMENT

Released: June 23, 2022

McEwen J.