

August 24, 2009

Ms. Kirsten Walli, Board Secretary  
**ONTARIO ENERGY BOARD**  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4

Dear Ms. Walli,

**Re: EB-2009-0257: Application by Ontario Energy Savings L.P. for Amendment of its Gas Marketer & Electricity Retailer Licences.**

We write as counsel in this matter to Just Energy Ontario L.P. (Just Energy), formerly Ontario Energy Savings L.P. (OES). This letter is submitted in response to the submissions of Solmon Rothbart Goodman LLP (SRG) herein dated August 18, 2009.

**The application.**

OES has applied to the Board for amendment of both its gas marketer (GM-2005-0316) and its electricity retailer (ER-2005-0314) licences, to effect reissuance of the licences in its new brand name; Just Energy.

The Board issued notice of these applications on August 4<sup>th</sup>, and directed the applicant to post the Notice of Application on its website and make it available for public review at its offices. The Notice of Application provided that any written submissions on the applications were to be filed with the Board by August 18, 2009.

On August 18, 2009, Just Energy received a copy of a letter from SRG, addressed to the Board. SRG's letter states that it constitutes a "*written representation in opposition to the proposed name change*". No other submissions have been filed in this matter.

**Just Energy's response.**

SRG's main assertion seems to be that OES has a history of questionable market conduct, and the licence amendment should not be permitted by the Board as such amendment would allow Just Energy to "*effectively bury its past*".<sup>1</sup> The implication of SRG's assertion seems to be that relicensing OES in the name Just Energy would somehow prejudice the ability of past, present or future customers to inform themselves of Just Energy's identity, offerings or consumer issues history in Ontario.

Just Energy will not, in this response, engage in detailed refutation of SRG's allegations regarding OES's market conduct (though some clarifying comments are offered at the conclusion of this letter, for the record).

Just Energy submits that granting of its application will in no way prejudice consumers, or the Board's consumer protection objectives. On the other hand, denying the application would significantly compromise Just Energy's legitimate business interests, and thus would be contrary to the public interest in a robust and transparent competitive retail energy supply market in Ontario.

**No prejudice to Just Energy customers.**

Just Energy could not "*bury its past*", even if it wanted to. This is clearly the case since:

- The Board's own public records, including this application for a licence amendment, refer to both Just Energy's new name and previous name.
- As evidenced by the corporate registrations attached to this letter, Just Energy's recent registration under the Ontario *Limited Partnerships Act* names its general partner - Just Energy Corp. - and Just Energy Corp.'s own Articles of Amendment list its previous name - Ontario Energy Savings Corp. As the lawyers at SLG will know, conducting these corporate searches by name is a simple and straightforward matter.

In any event, not only does Just Energy not seek to "*bury its past*", it has in fact sought to communicate and explain its rebranding to its trade allies and the general public.

Attached is a copy of a communication by Just Energy to Enbridge Gas Distribution dated June 1, 2009, which is representative of direct communications recently sent by Just Energy to its business contacts. Also attached is a copy of the cover, and opening page, of Just Energy's recently published 2009 Annual Report. Front and centre in these materials is discussion of the drivers for Just Energy's rebranding. Those drivers are described to include:

- **Consolidation of various acquired local brands into a single, consistent and distinctive brand identity across all markets.** Previously OES operated under a host of brands in various jurisdictions. In the materials attached, Just Energy describes its rebranding objectives to include easier communication, to all stakeholders, of its collective financial strength and the geographic scope of its operations across North America.

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<sup>1</sup> SRG August 18, 2009 letter, page 2, point numbered 4.

- **Clarification of an evolving value proposition.** In its published material Just Energy emphasizes that it has moved beyond "savings" to focus on managing energy costs and simplified consumer energy solutions. Associated with the new "Just Energy" brand is a new positioning statement - *"Energy Made Easy"* - to reflect the company's evolved value proposition. In considering a new brand, Just Energy was also cognizant of concerns expressed by some regulators that use of the term "savings" in the corporate name could focus potential customers on savings rather than security and simplicity. (While in each such case Just Energy satisfied the regulator's concerns, and in all cases Just Energy ensures that its materials clearly indicate that savings are not promised, the branding change eliminates any residual concerns in this respect.)

Just Energy's previous "Energy Savings" brand is expressly noted at the bottom of Just Energy's 2009 Annual Report cover. The old brand is also expressly noted on Just Energy's websites<sup>2</sup>, which also display, and will continue in the normal course to display, legacy corporate materials reflecting the previous OES brand.

In short, Just Energy has attempted to publicize its rebranding, not *"bury its past"*.

Just Energy notes that its present customers will henceforth be receiving bills with Just Energy's new name and contact number printed. There can be no issue regarding the ability of these customers to contact their contracted energy supplier.

In respect of prospective customers, if the Board determines that some action is required the Board could add a notation regarding Just Energy's previous business identity to the Board's web site listing of licenced energy retailers and/or to the Board's presentation on its website of retailer customer issues statistics. Any consumer inclined to investigate Just Energy's licence or complaint history would thus be directly informed that Just Energy previously operated as Ontario Energy Savings.

### **Legitimate business interests of Just Energy.**

For the reasons set out above, Just Energy submits that granting this application will not prejudice Ontario energy consumers.

On the other hand, refusal of this Application would significantly prejudice the legitimate business interests of Just Energy and thereby impede robust retail energy supply competition. Just Energy respectfully submits that facilitating competition in the retail supply of energy, and in any event avoiding unnecessary regulatory barriers to such competition, is in the public interest and is equally part of the Board's mandate.

The *Ontario Energy Board Act, 1998* provides<sup>3</sup> that the Board may, on the application of any person, amend a licence if it considers the amendment to be in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. The Board's objectives in relation to natural gas regulation include; i) the facilitation of competition in the sale of gas to users; ii) protection of the interests of consumers with respect to prices; and iii) the

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<sup>2</sup> See [www.justenergy.com](http://www.justenergy.com).

<sup>3</sup>Section 74.

promotion of communication within the gas industry and the education of consumers. The Board's objectives in relation to electricity regulation include the protection of the interests of consumers with respect to prices. The purposes of the *Electricity Act, 1998* include: i) protection of the interests of consumers with respect to prices of electricity service; and ii) the promotion of economic efficiency in the sale of electricity.

Just Energy submits that facilitating competitive retail supply of natural gas and electricity promotes all of these objectives, and in this respect the public interest favours the granting of the requested licence amendments. Allowing Just Energy to adopt its consolidated brand in Ontario will allow it to better reflect its consumer value proposition and its product values. This will facilitate; i) competition in the sale of gas and electricity, and thus efficient pricing of retail gas and electricity supply in Ontario; and ii) clear communication to consumers of the nature and attributes of Just Energy's product value proposition.

As reflected in the rebranding communication materials attached and referred to above, Just Energy has made a significant investment in developing and rolling out a fresh brand. The materials reflect Just Energy's intention that its new brand engender broad consumer recognition and reflect a defined set of product values. Just Energy has to date adopted its new brand in Ontario, Quebec, Manitoba, British Columbia, Illinois, Indiana and Texas, where, subject to this application, all requisite approvals have been granted. Approval is currently pending in New York and Alberta. Rebranding a commercial operation like Just Energy's is a non-trivial task. It involves a significant investment of time, money and planning activity. Denial of this application would undermine Just Energy's extensive investment in rebranding itself across North America, and would render Just Energy's retail business in Ontario both more expensive and less effective than it would otherwise be. Fragmented branding could also result in consumer confusion. This result would be both unfair to Just Energy and contrary to the energy consuming public's interest.

#### **Additional comments on SRG's submission.**

Before concluding this response, Just Energy feels compelled to briefly comment on a few particular aspects of SRG's submissions:

1. SRG purports to advance its opposition *"on behalf of a client that is in the process of preparing a complaint against OES, and all consumers of electricity in the Province of Ontario"*.<sup>4</sup> SRG has not disclosed the identity of its client, so Just Energy is unable to address the extent to which that individual has a legitimate interest in this application (except to note that the individual in question is obviously aware of Just Energy's rebranding). In respect of the broader representation by SRG of *"all consumers of electricity in the Province of Ontario"*, while it may be appropriate for SRG to speak for itself as a consumer of electricity, Just Energy questions SRG's authority to speak on behalf of all Ontario electricity consumers, and doubts the basis upon which SRG has informed itself of the interests of such consumers. There are many Ontario energy consumers interested in competitive retail offerings, and innovations by companies such as Just Energy in providing retail energy products. As submitted above, business evolution and product value reflective branding represent such innovations. Such innovations are in the public interest.

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<sup>4</sup> SRG August 18, 2009 letter, page 1, 2<sup>nd</sup> paragraph.

2. SRG asserts "*past convictions for fraud*"<sup>5</sup>. This is a very serious assertion. In fact, as should have been readily apparent to SRG, OES was not "convicted of fraud". Rather OES was subject to administrative penalties levied by the Board for licensing violations that are alleged to have occurred more than 7 years ago. OES did not dispute the matter, but rather, without admission of wrongdoing, paid the fine. SRG's lawyers should be aware that alleging conviction for fraud where no such conviction occurred and where fraud was not criminally proven is a serious matter. Just Energy takes exception to such serious allegations, particularly on a public record.
3. SRG asserts a "*general increase*" in consumer complaints against OES regarding contract management, and that OES has "*consistently*" been subject to the second largest volume of consumer complaints.<sup>6</sup> SRG relies on the Board's posting of statistics regarding low-volume consumer issues in support of these assertions. While Just Energy has not undertaken a detailed analysis of the data, it appears that low volume consumer issues recorded by the OEB involving OES were 2<sup>nd</sup> highest in only 4 out of the 11 quarters reported to date. Further, Just Energy assumes that SRG has appropriately considered the changing x-axis scale of these statistical summaries posted by the OEB since October 2006. Considering such scale changes, while Just Energy acknowledges an uptick in reported consumer issues in the last 2 quarters reported (ending June 30, 2009), it cannot accede to the assertion that there has been a trend of general increase over the reporting period.
4. SRG refers to the Ontario *Change of Name Act*, and asserts that "*it may be important for the Board to appreciate...that any past criminal convictions or even criminal charges as against the individual are a mandatory consideration in deciding whether...the change of name can be granted*". Just Energy notes that:
  - a. When the full *Change of Name Act* is reviewed, it is clear that the act applies only to an individual applying to change their name (forename, surname or both, see section 4) or the name of a child (see section 5). Ontario statutes governing corporate or business name changes include no provisions analogous to those found in the *Change of Name Act* and referenced by SRG.
  - b. While the Ontario *Change of Name Act* is not relevant to consideration of this application, Just Energy notes that, in any event, this act does not in fact require the Registrar General there under to consider the information items required pursuant to section 6(2) of the act to be included in a personal (as distinct from corporate) change of name application. Rather, section 7 of the legislation requires the Registrar General to register the name change providing that the application is complete, "*unless the Registrar General believes on reasonable grounds that the applicant seeks the change of name for an improper purpose*". Ontario courts have held that the legislation is prescriptive in requiring approval of a name change when the application requirements have been met<sup>7</sup>, and that the Registrar General's role is to assure compliance with the act<sup>8</sup>. These obligations are subject only to a finding of "improper purpose" (which Ontario courts

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<sup>5</sup> SRG August 18, 2009 letter, page 2, paragraph numbered "4."

<sup>6</sup> SRG August 18, 2009 letter, page 3, first paragraph.

<sup>7</sup> *Mitchell v. Huitema* (1993) 44 R.F.L. (3d)218, 100 D.L.R. (4th) (Ont. C.J.).

<sup>8</sup> *Belsile v. Poole* (1994), 2 R.F.L. (4<sup>th</sup>) 165, 111 D.L.R. (4<sup>th</sup>) 717 (Ont. C.J.).

have found to be in the nature of a intentional calculation to deceive or to inflict pecuniary loss<sup>9</sup>).

- c. Despite extensive energy consumer protection provisions in relevant Ontario legislation, regulations and codes, there are no prohibitions, limitations or conditions regarding the ability of an energy retailer to change its name.

**Conclusion.**

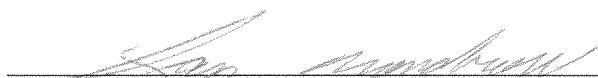
Just Energy submits that SRG has raised no legitimate grounds for rejection by the Board of this application. In particular, no prejudice to the public will result from granting the application. Just Energy submits that the public interest is fully protected by the Board's application requirements and by general requirements for corporate and business name registrations in Ontario. As previously noted, a simple notation where Just Energy's name is listed on the Board's web site could allay any residual concerns if the Board deems such to be required.

In conclusion, Just Energy respectfully submits that granting of its application would be in the public interest, and requests that pursuant to section 74 of the *Ontario Energy Board Act, 1998* the Board proceed to grant the application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Macloed Dixon, LLP

Per:



Ian A. Mondrow

Counsel for Just Energy Ontario L.P.

151669.v2

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<sup>9</sup> *Rezek, re*, 1946 CarswellOnt 361 (Ont. Co. Ct.).



Attachment 1

6545 Dufferin Road, Suite 200  
Mississauga, Ontario, L5T 2E6

T 905 670 4440  
F 905 670 9160  
info@justenergy.com

June 1, 2009

**BY FAX TO: (416) 495-6334**

Enbridge Gas Distribution Inc.  
500 Consumers Road  
North York, Ontario  
M2J 1P8

Attention: Associate General Counsel & Corporate Secretary

**RE: ENERGY SAVINGS GROUP NAME CHANGE TO JUST ENERGY**

We are writing to notify you that the Energy Savings Group is rebranding to be JUST ENERGY and therefore changed the name of the Energy Savings Income Fund to Just Energy Income Fund effective on June 1, 2009. Even though we are changing our company name, we want to stress that our service, support, and long term commitment to our business partners and customers remains unchanged. All of our existing Agreements remain valid and in full force and effect.

We are rebranding under the JUST ENERGY name to focus on our overall value proposition of fairness, honesty and integrity, energy market expertise, simplicity and service.

Please find attached a copy of legal documentation evidencing this name change. As applicable, we will forward evidence of our further name changes when they are complete.

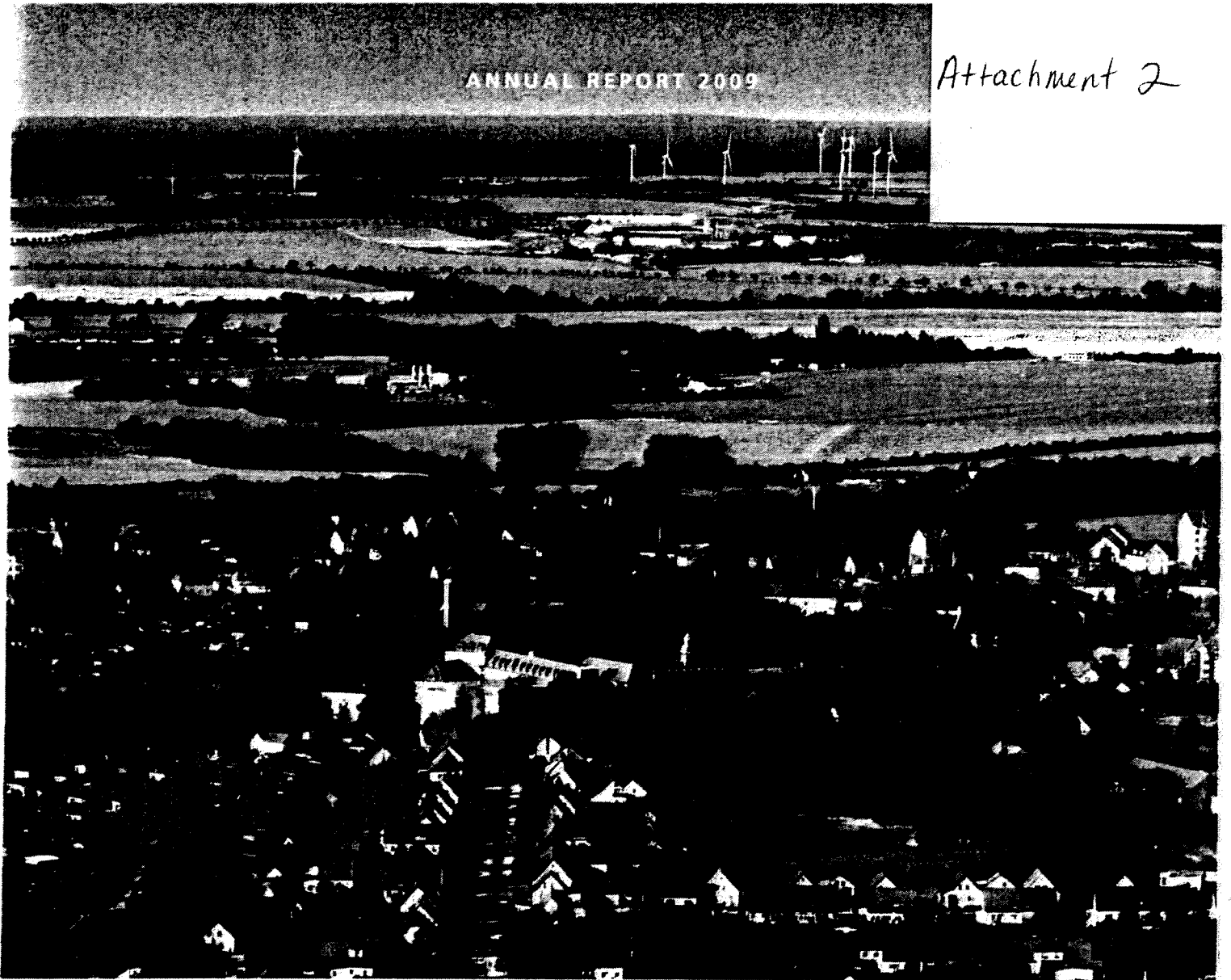
For more information please visit our new website [justenergy.com](http://justenergy.com).

Yours very truly,

**JUST ENERGY**

ANNUAL REPORT 2009

Attachment 2



SELECTION SERVICE STABILITY

THESE ARE THE ONLY TWO FUND CATEGORIES THAT HAVE BEEN RATED "A" BY STANDARD & POOR'S FOR THE PAST FIVE YEARS. THE FUND CATEGORIES HAVE BEEN RATED "A" BY STANDARD & POOR'S FOR THE PAST FIVE YEARS. THE FUND CATEGORIES HAVE BEEN RATED "A" BY STANDARD & POOR'S FOR THE PAST FIVE YEARS.

IT'S WHAT WE PROVIDE



FORMERLY ENERGY SAVINGS INCOME FUND

## ENERGY SAVINGS IS NOW JUST ENERGY!

When Energy Savings was founded in 1997, our name reflected an essential characteristic of our fixed-price offering. As we grew, a series of local brand identities helped facilitate entry into new markets. While this approach served us well, changes in our industry and our company have made this an excellent time to reconsider both our corporate identity and our value proposition. As a result, we are rebranding Energy Savings as Just Energy and moving forward with a single, consistent and distinctive brand identity across all markets.

As an organization, one of our competitive advantages is our relative size, strength and stability. The change to a single identity will support future growth by allowing us to more easily communicate, to all stakeholders, our collective financial strength and the positive impact we've had on consumers across North America.

The rebranding also enables us to clarify our evolving value proposition. Our increasing level of energy market expertise – combined with a continued commitment to fairness, integrity and customer service – has taken us beyond savings. Today, our focus is on providing both residential and commercial consumers with a straightforward, worry-free way of managing energy costs – one that provides price protection and the ability to budget more effectively as well as peace of mind. The name Just Energy and our new positioning statement “Energy Made Easy” embody this philosophy.

Equally as important, our new logo reflects our increased focus on green energy and other environmentally friendly products and services. We aim to be a leader in this area and want to convey our commitment.

The first step in our rebranding process was the renaming of Energy Savings Income Fund to Just Energy Income Fund. The next step is the conversion of our Canadian and U.S. operating subsidiaries. We expect to be operating as Just Energy in all markets by the fall of 2009.



Just Energy's business involves the sale of natural gas and electricity to residential, small to mid-size commercial and small industrial customers under long-term, irrevocable fixed-price contracts (price protected for electricity). Just Energy offers natural gas in Manitoba, Quebec, British Columbia, Illinois and Indiana and both gas and electricity in Ontario, Alberta and New York as well as electricity only in Texas. By securing the price for natural gas or electricity under such contracts for a period of up to five years, Just Energy's customers reduce or eliminate their exposure to changes in the price of these essential commodities. Just Energy also has environmentally friendly offerings of natural gas and electricity through its Green Energy Option program.



Ministry of  
Government Services

Ministère des  
Services gouvernementaux

Declaration Form 3  
under the Limited Partnerships Act  
Déclaration Formule 3  
aux termes de la Loi sur les sociétés en commandite

Attachment 3

Print clearly in CAPITAL LETTERS / Écrivez clairement en LETTRES MAJUSCULES

Page \_\_\_\_ of \_\_\_\_

1. Declaration Type Type de déclaration	A. <input checked="" type="checkbox"/> New Nouvelle	B. <input checked="" type="checkbox"/> Name Change Modification de la raison sociale	C. <input type="checkbox"/> Change (other than name change) Changement (autre que modification de la raison sociale)
D. <input type="checkbox"/> Renewal Without Name Change Renouvellement sans modification de la raison sociale	E. <input type="checkbox"/> Renewal With Name Change Renouvellement avec modification de la raison sociale	F. <input type="checkbox"/> Dissolution Dissolution	G. <input type="checkbox"/> Withdrawal Retrait
Enter the Business Identification Number (BIN) for all Declaration Types except Type A. Entrez le n° d'identification de l'entreprise (NIE) pour tous les types de déclaration, sauf pour le type A.		BIN (Business Identification No.) NIE N° d'identification de l'entreprise	

150677821

2. Firm Name / Raison sociale de la société en commandite

JUST ENERGY ONTARIO L.P.

3. Mailing Address  
of Registrant  
Adresse postale  
de registrant

Street No. / N° de rue: 100 KING STREET WEST 2630  
City / Town / Ville: TORONTO ON CANADA M5X 1E1  
Province / Province: ON  
Country / Pays: CANADA  
Postal Code / Code postal: M5X 1E1

4. Address of Principal Place of Business in Ontario / Adresse de l'établissement principal en Ontario

☒ Same as above  
comme ci-dessus

☐ Extra-Provincial Limited Partnership without business address in Ontario  
Société en commandite extraprovinciale sans établissement en Ontario

Street No. / N° de rue: 100  
Street Name / Nom de la rue: KING STREET WEST  
Suite No. / Bureau n°: 2630  
City / Town / Ville: TORONTO  
Province / Province: ON  
Country / Pays: CANADA  
Postal Code / Code postal: M5X 1E1

5. General Nature of Business / Nature générale de l'activité exercée

GAS AND ELECTRICITY MARKETERS

6. Information Regarding General Partner(s) / Renseignements sur le ou les commandités

(A) Individual / Personne physique - Last Name / Nom de famille: First Name / Prénom: Middle Name / Autre prénom:

(B) Corporation, Partnership etc. / Personne morale, société en nom collectif etc. - Name / Raison sociale:

JUST ENERGY CORP.

Ontario Corporation Number  
N° matricule de la personne morale en Ontario  
1733628

Address / Adresse: Street No. / N° de rue: 100  
Street Name / Nom de la rue: KING STREET WEST  
Suite No. / Bureau n°: 2630  
City / Town / Ville: TORONTO  
Province / Province: ON  
Country / Pays: CANADA  
Postal Code / Code postal: M5X 1E1

Signature of General Partner or Attorney for the General Partner/  
Signature du commandité ou de son procureur

X   
Print Name of Signatory / Nom du signataire en lettres moulées  
KEN HARTWICK, PRESIDENT & CEO

Check if signing as attorney on behalf of the general partner pursuant to s. 32 of the Limited Partnerships Act.

Cochez la case ci-contre si le signataire est le procureur du commandité (art. 32 de la Loi)

For a new Declaration, name change or renewal, Item 6 must be completed and signed by all the general partners or their attorneys. If there is more than one general partner, set out the total number of partners in the box and attach additional schedule(s) / Pour une nouvelle Déclaration, une modification de la raison sociale ou un renouvellement, il faut remplir la section 6 pour chaque commandité, et chaque commandité ou son procureur doit signer la section 6. S'il y a plus d'un commandité, entrez le nombre total de commandités dans la case ci-contre et remplissez et joignez une ou des annexes.

Number of General Partners  
Nombre de commandités

1

7. Jurisdiction of Formation / Territoire d'origine

ONTARIO

Extra-Provincial Limited Partnership Carrying on Business in Ontario / Société en commandite extraprovinciale menant des activités en Ontario

8. Information Regarding Attorney/Representative for an Extra-Provincial Limited Partnership - (Does not apply to limited partnerships formed in another Canadian jurisdiction that have an office or other place of business in Ontario) / Renseignements sur le procureur / représentant de la société en commandite extraprovinciale - (Ne s'applique pas aux sociétés en commandite d'un autre territoire canadien qui ont un établissement en Ontario)

Power of Attorney - Check the box to confirm there is an executed Power of Attorney (Form 4) appointing the person/corporation listed below to be the attorney and representative in Ontario. The attorney/representative is required to keep the executed Form 4 available for inspection at the address set out below. / Procuration - Cochez la case ci-contre pour confirmer qu'il y a une Procuration signée (Formule 4) nommant la personne physique ou morale indiquée ci-dessous à titre de procureur et représentant en Ontario. Celui-ci doit tenir la Formule 4 signée à disposition aux fins d'inspection à l'adresse ci-dessous.

Attorney / Representative - Procureur / représentant

(A) Individual / Personne physique - Last Name / Nom de famille: First Name / Prénom: Middle Name / Autre prénom:

(B) Corporation, Partnership etc. / Personne morale, société en nom collectif etc. - Name / Raison sociale:

Ontario Corporation Number  
N° matricule de la personne morale en Ontario

Address / Adresse: Street No. / N° de rue: Street Name / Nom de la rue: Suite No. / Bureau n°:

City / Town / Ville: Province / Province:

Country / Pays: Postal Code / Code postal:

MINISTRY USE ONLY - RÉSERVÉ AU MINISTÈRE

BIN/EIN: 150677821  
NAME: JUST ENERGY  
REG/ENR: 2009-07-21  
EXP/EXP: 2015-06-08



6. The amendment has been duly authorized as required by sections 168 and 170 (as applicable) of the *Business Corporations Act*.  
La modification a été dûment autorisée conformément aux articles 168 et 170 (selon le cas) de la *Loi sur les sociétés par actions*.
7. The resolution authorizing the amendment was approved by the shareholders/directors (as applicable) of the corporation on  
Les actionnaires ou les administrateurs (selon le cas) de la société ont approuvé la résolution autorisant la modification le

2009/07/20

(Year, Month, Day)  
(année, mois, jour)

These articles are signed in duplicate.  
Les présents statuts sont signés en double exemplaire.

ONTARIO ENERGY SAVINGS CORP.

(Print name of corporation from Article 1 on page 1)  
(Veuillez écrire le nom de la société de l'article un à la page une).

By/  
Par:



(Signature)  
(Signature)

President & CEO

(Description of Office)  
(Fonction)