

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER of an inquiry commenced pursuant to subparagraph 10(1)(a) of the *Competition Act* with respect to certain alleged deceptive marketing practices of National Energy Corporation under paragraph 74.01(1)(a) of the *Competition Act*;

AND IN THE MATTER of the filing and registration of a Consent Agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

<p align="center">COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT</p>	<p align="center">THE COMMISSIONER OF COMPETITION</p>	<p align="right">Applicant</p>
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CT-2014-007
November 24, 2014

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

- and -

OTTAWA, ONT	# 2
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**NATIONAL ENERGY CORPORATION and
JUST ENERGY GROUP INC.**

Respondents

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the "Commissioner") is responsible for the administration and enforcement of the *Competition Act* (the "Act");

AND WHEREAS the Respondent, National Energy Corporation ("National"), is a subsidiary of Just Energy Group Inc., and operates as "National Home Services" and "Services aux foyers", with its head office at 100 King Street West, Suite 2630, Toronto, Ontario, M5X 1E1;

AND WHEREAS the Respondent, Just Energy Group Inc. ("Just Energy"), is a publicly-traded corporation, with its head office at 100 King Street West, Suite 2630, Toronto, Ontario, M5X 1E1;

AND WHEREAS National is engaged in the promotion and supply of rental water heaters and the rental of HVAC (heating, ventilation and air conditioning) equipment to both existing and new residential customers in Ontario and Quebec;

AND WHEREAS the Commissioner commenced an inquiry on January 10, 2013, pursuant to section 10 of the Act into certain alleged deceptive marketing practices of National, notably in relation to alleged misrepresentations made through door-to-door promotions of Residential Water Heaters (as defined herein) rentals to residential customers;

AND WHEREAS complaints received by the Competition Bureau, the Ontario Ministry of Consumer Services, the Better Business Bureau and the Quebec Office de la protection du consommateur alleged that door-to-door representatives of National made false or misleading representations regarding the purpose of their visit to the customer's residence, the identity of the Agents (as defined herein), the alleged costs and energy savings, the need to replace the water heater, the terms and conditions, the duration and the non-disclosure of key terms and conditions of the Residential Water Heater rental agreements;

AND WHEREAS the Commissioner has concluded that during the Relevant Time Period (as defined herein), National made, caused to be made or permitted to be made on their behalf, materially false or misleading representations to the public, via door-to-door marketing, for the purpose of promoting, directly or indirectly, the supply or use of Residential Water Heater rentals contrary to paragraph 74.01(1)(a) of the Act;

AND WHEREAS the Commissioner is of the view that National, for the purposes of promoting, directly or indirectly, the supply or use of Residential Water Heater rentals, are deemed to have made false or misleading representations to the public, in accordance with subsection 74.03(1) of the Act;

AND WHEREAS the Commissioner and the Respondents are satisfied that this matter can be resolved with the registration of this Consent Agreement (the "Agreement");

AND WHEREAS IT IS AGREED AND UNDERSTOOD that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission, including in any proceedings under section 74.13 of the Act, the Respondents do not contest the Commissioner's conclusions, and nothing in this Agreement will be taken as an admission or acceptance by the Respondents of any facts, liability, wrongdoing, submissions, legal argument or conclusions for any other purpose, nor shall it derogate from any rights or defences of the Respondents against third parties;

AND WHEREAS IT IS AGREED AND UNDERSTOOD that upon registration, pursuant to section 74.12 of the Act, this Agreement has the same force and effect as if it were an order of the Competition Tribunal (the "Tribunal");

NOW THEREFORE, in order to resolve the Commissioner's concerns, the Commissioner and the Respondents (collectively, the "Parties") hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:
 - i. "Act" means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

- ii. **"Affiliate"** means an affiliated corporation, partnership or sole proprietorship within the meaning of section 2(2) of the Act;
- iii. **"Agent" or "Agents"** means those individuals and entities with whom National has contracted or employed, now or in the future, to sell or market the Product on behalf of National;
- iv. **"Agreement"** means this Consent Agreement entered into by the Respondents and the Commissioner pursuant to section 74.12 of the Act, including the Appendix hereto;
- v. **"Commissioner"** means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- vi. **"Compliance Program"** has the meaning set out in Section VI of this Agreement;
- vii. **"Customer"** means a person who is subject to a Residential Water Heater rental agreement with National, including a person who has become subject to a Residential Water Heater rental agreement by reason of purchasing or renting a residential dwelling in which a Residential Water Heater rental, from National, was previously installed, and that was acquired through door-to-door sales during the Relevant Time Period;
- viii. **"Days"** means calendar days;
- ix. **"Execution Date"** means the date on which the Agreement has been signed by the Parties;
- x. **"Effective Date"** means the date on which this Agreement is recorded by the Tribunal as having been registered, pursuant to section 74.12 of the Act;
- xi. **"Independent Monitor"** means a person responsible for monitoring National's compliance with the terms of this Agreement;
- xii. **"Just Energy"** means Just Energy Group Inc., its directors, officers, employees, agents, representatives, successors and assignors; and all joint ventures, subsidiaries within the meaning of subsection 2(3) of the Act, divisions and Affiliates controlled by Just Energy, and the respective directors, officers, employees, agents, representatives, successors and assignors of each;
- xiii. **"National"** means National Energy Corporation, operating as National Home Services and Services aux foyers, its directors, officers, employees, agents, representatives, successors and assignors, joint ventures, subsidiaries within the meaning of subsection 2(3) of the Act, divisions and Affiliates controlled by National, and the respective directors, officers, employees, agents, representatives, successors and assignees of each. For greater certainty, this

shall also include any subsequent purchaser, owner or operator of National's Residential Water Heater business, whether through purchase or restructuring;

- xiv. **"Parties"** means the Commissioner and the Respondents collectively, and **"Party"** means any one of them separately;
- xv. **"Person"** means any individual, corporation, sole proprietorship, partnership, joint venture, firm, association, trust, unincorporated organization or other entity, and any subsidiaries, divisions, groups or any Affiliate thereof;
- xvi. **"Product"** has the meaning provided by section 2 of the Act, which includes an article and a service and in this Agreement is limited to Residential Water Heaters sales and rentals;
- xvii. **"Records"** means records within the meaning of subsection 2(1) of the Act;
- xviii. **"Relevant Time Period"** means the period between July 1, 2008 and the Execution Date;
- xix. **"Residential Water Heater"** means an electric or natural gas-fuelled water heater of any design type, including conventional and power-vented units and tank and tankless units, installed for residential rental use and not for any commercial, industrial, institutional or any other non-residential use;
- xx. **"Respondents"** means National and Just Energy;
- xxi. **"Respondents' Personnel"** means all current and future senior management of the Respondents, including senior officers, managers, and directors, and all other employees of the Respondents, including their Agents, who are materially involved in the formulation and/or the implementation of advertising, marketing and compliance policies; and
- xxii. **"Tribunal"** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. APPLICATION

- 2. The provisions of this Agreement apply to:
 - i. the Respondents; and
 - ii. the Commissioner.

III. TERM

3. Except as otherwise specified, this Agreement shall become effective on the date when it is registered, and, subject to any order of the Tribunal or a court, shall remain in effect for a period of ten (10) years from the Effective Date.

IV. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE *COMPETITION ACT*

4. The Respondents shall comply with the false or misleading representation and deceptive marketing practices provisions of the Act (and without limiting the generality of the foregoing, sections 52 and 74.01 of the Act) in the marketing and sale of the Product.
5. The Respondents shall not, for the purpose of promoting the supply or use of the Product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatsoever, make, cause to be made, or permit to be made on their behalf, any representation to the public with respect to the Product that is false or misleading in a material respect.
6. Without limiting the generality of the foregoing, the Respondents shall not make, cause to be made, or permit to be made on their behalf any representation to the public with respect to the Product that creates a materially false or misleading general impression:
 - i. that an Agent is acting on behalf of a person other than the Respondents, including but not limited to: (I) a utility; (II) a competitor to the Respondents; or (III) a government, quasi-government agency or a similar body;
 - ii. regarding the reasons that an Agent requests access to a homeowner's Residential Water Heater, including but not limited to any materially false or misleading representation that an Agent requires access to the Residential Water Heater: (I) for safety reasons; (II) to determine whether the Residential Water Heater complies with any legal requirements; (III) to determine whether the Residential Water Heater is eligible for an upgrade; (IV) to determine whether the Residential Water Heater is Energy Star compliant; or, (V) to determine whether the Residential Water Heater is compliant with any other voluntary code;
 - iii. that a Residential Water Heater requires replacement, including but not limited to any materially false or misleading representation that: (I) the Residential Water Heater does not comply with any laws, codes or regulatory requirements; (II) the Residential Water Heater is unsafe, inefficient or must be replaced due to its age; (III) the Residential Water Heater is eligible for cost savings; or, (IV) the Residential Water Heater is eligible for an upgrade;
 - iv. regarding consumers' rights under any applicable consumer protection legislation, including but not limited to, false or misleading representations about consumers'

rights to cancel any agreement entered into between the consumer and the Respondents for the rental of a Residential Water Heater; and

- v. relating to the characteristics of the Residential Water Heater, any additional charges or costs associated with the rental of a Residential Water Heater, or the terms and conditions of a Residential Water Heater rental agreement, including any failure to disclose to the consumer material terms and conditions of a Residential Water Heater rental agreement prior to the execution of such agreement by the consumer.
7. If the Respondents become aware that there has been a breach of any of the terms of this Agreement, the Respondents shall, within seven (7) days after becoming aware of the breach, notify the Commissioner and the Independent Monitor (if within the term of the Independent Monitor's appointment) thereof and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach, and the steps the Respondents have taken or will take to correct the breach.

V. PAYMENTS

A. ADMINISTRATIVE MONETARY PENALTY

8. The Respondents shall pay an administrative monetary penalty in the amount of five million dollars (\$5,000,000).

B. COSTS

9. The Respondents shall pay five hundred thousand dollars (\$500,000) in respect of costs and disbursements incurred by the Competition Bureau during the course of its investigation into this matter.

C. FORM OF PAYMENT

10. The payments referred to in paragraphs 8 and 9 above shall be made as soon as possible and no later than ten (10) days after the Effective Date of the Agreement, by certified cheque or by wire transfer made payable to the Receiver General for Canada.

D. RESTITUTION

11. National shall provide one million, five hundred thousand dollars (\$1,500,000) in consumer restitution, to be distributed equally, to all existing Customers who were acquired by National Energy Corporation through door-to-door marketing during the Relevant Time Period, with the exception of Respondents' Personnel. Such payment shall be made through a direct credit on the Customer's Residential Water Heater bill as soon as practicable and in any event within ninety (90) days of the Effective Date.

12. National shall also issue a written statement to Customers who were acquired by National, through door-to-door marketing during the Relevant Time Period making reference to this Agreement using the process and form described in Appendix "A". within ninety (90) days of the Effective Date.
13. National shall complete the consumer restitution process in accordance with paragraphs 11 and 12 above as soon as practicable and in any event, within ninety (90) days of the Effective Date.

VI. CORPORATE COMPLIANCE PROGRAM

14. Within sixty (60) days of the Effective Date of this Agreement, the Respondents shall enhance and thereafter maintain, a Corporate Compliance Program ("Compliance Program"), the goal of which is to promote the compliance of the Respondents with the Act generally and, without limiting the generality of the foregoing, the false or misleading representations and deceptive marketing practices provisions of the Act. The Compliance Program shall be consistent with the *Information Bulletin on Corporate Compliance Programs* as published (as of the Execution Date of this Agreement) on the Competition Bureau's web site at www.competitionbureau.gc.ca.
15. The Respondents shall require all Respondents' Personnel to complete an annual written acknowledgement of their awareness and comprehension of the Compliance Program as provided for in this Agreement, and the Respondents shall retain the completed acknowledgement forms throughout the term of this Agreement.

VII. COMPLIANCE REPORTING AND MONITORING

(i) Independent Monitor

16. The Commissioner shall appoint an Independent Monitor for a period of two (2) years within thirty (30) days of the Effective Date of this Agreement. National shall be responsible for all reasonable fees and expenses properly charged or incurred by the Independent Monitor in the course of carrying out its duties and responsibilities under this Agreement.
17. The Independent Monitor shall be responsible for monitoring compliance by National with the Agreement. Without restricting the generality of the foregoing, the Independent Monitor shall carry out a quality assurance review of National's door-to-door promotions of the supply or use of the Product with a view to reporting on National's compliance with this Agreement and, more specifically, the false or misleading representations and deceptive marketing practices provisions of the Act (the "Review"). The Review should be a combination of objective pass/fail compliance testing and a subjective assessment in order to make corrective recommendations for managerial deficiencies. The Review should focus on hiring, training, solicitation procedures and performance, management

control, sales verification, quality assurance, complaint tracking, handling and reporting, discipline and compliance programs and procedures.

18. The Independent Monitor shall have reasonable access to National's facilities, records and personnel on at least two (2) days notice during regular office hours, subject to any legally recognized privilege. The Independent Monitor shall immediately advise the Commissioner and National of any significant compliance deficiencies. In addition to annual reports, the Independent Monitor will provide compliance reports upon the Commissioner's request. These compliance reports shall be provided to the Commissioner and National and may include, but are not limited to, the Independent Monitor's findings regarding National's:
- i. Recruiting and training of Agents;
 - ii. Sales, verification and quality assurance processes;
 - iii. Sales, training and promotional material;
 - iv. Door-to-door sales process;
 - v. Implementation of the Compliance Program;
 - vi. Complaint handling process for false or misleading representations; and
 - vii. Recommendations to National Senior Management to improve its Compliance Program.

(ii) Immediate Reporting Obligations

19. National shall provide a copy of this Agreement to all current and future Respondents' Personnel within fourteen (14) days of the Effective Date of this Agreement or within fourteen (14) days of their appointment, and in so doing the Respondents shall indicate that compliance with this Agreement is the policy of the Respondents.

(iii) Reports regarding Compliance with Restitution Commitments

20. The Respondents shall submit to the Commissioner, on or before thirty (30) days after the date for completing the consumer restitution process, a report outlining the total amounts paid for restitution for each customer account, any additional inquiries for consumer restitution requests and the responses to any inquiries, and other relevant records demonstrating compliance with paragraphs 11 through 13 of this Agreement.

(iv) Information Requests

21. During the term of this Agreement, the Respondents shall provide to the Commissioner within thirty (30) days after receipt of a written request from the Commissioner, all Records and written returns, in such form as the Commissioner may reasonably request,

for the purpose of monitoring compliance with this Agreement, including copies of any promotional materials and representations relating to the Product.

(v) *Agreement to Cooperate*

22. During the term of this Agreement, for the purpose of determining or securing compliance with this Agreement, subject to any valid claim to a legally recognized privilege, and upon written request given at least two (2) days in advance to the Respondents, the Respondents shall permit any duly authorized representatives of the Commissioner, without restraint or interference:
- i. to access during regular office hours of the Respondents, all facilities and to inspect and copy all Records in the possession or control of the Respondents related to compliance with this Agreement, with copying services to be provided by the Respondents at its expense; and
 - ii. to interview directors, officers or employees of the Respondents on matters related to compliance with this Agreement.

(vi) *Notice of Fundamental Corporate Change*

23. With the exception of any proposed transaction previously notified to the Commissioner prior to the Effective Date, the Respondents shall notify the Commissioner at least thirty (30) days prior to:
- i. any proposed dissolution of either Respondent; or
 - ii. any other change to either Respondent including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of the Respondents' incorporating statute, if such change may affect compliance obligations arising out of this Agreement.

VIII. NOTICES

24. Notices, reports and other communications required or permitted by the Commissioner and the Respondents, pursuant to any of the provisions of this Agreement or in any proceedings arising here from before the Tribunal or the courts, shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

(a) The Commissioner:

Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street, 21st Floor
Gatineau, QC KIA OC9

Attention: Deputy Commissioner of Competition (Fair Business Practices Branch)

Telephone: 819-997-1208
Facsimile: 819-953-3835

With a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau, QC KIA OC9

Telephone: 819-994-7714
Facsimile: 819-953-9267

(b) The Respondents

Just Energy Group Inc.
Suite 2630
100 King Street West
Toronto, Ontario
M5X 1E1

Attention: General Counsel
Telephone: (905) 595-3563
Facsimile: (905) 564-6069

and

National Energy Corporation
Suite 2630
100 King Street West
Toronto, Ontario
M5X 1E1

Attention: President
Telephone: 1-877-673-5373
Facsimile: (416) 747-5872

With a copy to:

Adam Fanaki
Davies Ward Phillips & Vineberg LLP
40th Floor
155 Wellington Street West
Toronto, Ontario
M5V 3J7

Telephone: (416) 863-5564
Facsimile: (416) 863-0871

or to such other individual as may be designated by notice given by any Party to the other Party in accordance with the provisions of this section.

25. A notice, consent or approval under this Agreement is effective on the day that it is received by the receiving Party. A notice, consent or approval is deemed to have been received as follows:
- i. if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
 - ii. if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
 - iii. if it is delivered by electronic mail, when the recipient acknowledges having received that email by sending a reply email. An automatic "read receipt" is not considered acknowledgement of an email for purposes of Section VIII of this Agreement.

If a notice is received after 5:00 p.m. local time, or on a holiday, then the notice shall be deemed to have been received on the next day that is not a holiday.

26. Notwithstanding paragraphs 24 and 25, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with paragraphs 24 and 25 is valid if a representative of the Party to this Agreement, that is the recipient of such communication, confirms the receipt of such communication.

IX. GENERAL

27. The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 74.12 of the Act. The Respondents hereby consents to such registration.
28. Nothing in this Agreement precludes the Respondents or the Commissioner from bringing an application under section 74.13 of the Act to rescind or vary this agreement.
29. The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement for variation or rescission.
30. This Agreement shall be governed by and interpreted in accordance with all applicable provincial laws and the laws of Canada therein, without applying any otherwise applicable conflict of law rules. This Agreement shall not derogate from any consumer rights created by current or future consumer protection legislation in Canada or any relevant provincial jurisdiction.
31. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, the Commissioner and/or the Respondents may apply to the Tribunal for directions or an order. In no event shall any dispute suspend any time period under this Agreement. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
32. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
33. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED at the City of Houston, in the State of Texas, this 23rd day of November, 2014.

(Original as signed)

for: _____
National Energy Corporation
James Lewis, President
I have authority to bind the corporation.

DATED at the City of Houston, in the State of Texas this 23rd day of November, 2014.

(Original as signed)

for: _____
Just Energy Group Inc.
James Lewis, President and Co-Chief Executive Officer
I have authority to bind the corporation.

DATED at Gatineau, in the Province of Quebec, this 24th day of November, 2014.

(Original as signed)

Commissioner of Competition
Per: John Pecman
Commissioner of Competition

Appendix "A"**NOTICE REGARDING A CREDIT TO NATIONAL HOME SERVICES (OR SERVICES AUX FOYERS) CUSTOMERS**

National Energy Corporation ("National") shall issue a notice (the "Notice") to existing Customers who were acquired by National Energy Corporation through door-to-door marketing during the Relevant Time Period regarding the credit to be issued pursuant to paragraphs 11 to 13 of the Agreement. The Notice shall be sent to such Customers through any of the following methods: (i) as an insert accompanying a paper bill to the Customer; (ii) as part of the text found on an electronically issued bill to a Customer; or (iii) through a letter or email message to the Customer using the last known address found in the records of National. The Notice shall be issued as soon as practicable and in any event, within ninety (90) days of the Effective Date. In addition, the notice shall appear on National's website in both English and French for no less than ninety (90) days, accessible by a link entitled "A Notice Regarding a Credit to National Home Services (or Services aux foyers) Customers".

The text of the Notice shall be as follows:

Customer credit as a result of the Competition Bureau's investigation into the sale and marketing of residential water heater rentals

The Competition Bureau has informed National Energy Corporation, operating as National Home Services or Services aux foyers ("National"), that certain of its door-to-door marketing practices for residential water heater rentals have raised concerns under the deceptive marketing practices provisions of the *Competition Act*.

National does not admit to any conduct contrary to the *Competition Act*. However, in recognition of both the concerns of the Commissioner of Competition (the "Commissioner") and the importance of providing accurate information to consumers, National and the Commissioner have entered into a Consent Agreement which addresses the Commissioner's concerns. National has also agreed to provide a credit to all current water heater rental customers, acquired by National through door-to-door marketing, in the amount of \$[insert]. You will see this reflected as a direct credit applied to your bill for water heater rental services.

Any questions about the consumer restitution should be directed to National at 1-877-673-5373.

The Consent Agreement has been filed with the Competition Tribunal for registration and will be available on the Tribunal's web site at www.ct-tc.gc.ca. For additional information, consult the Competition Bureau's web site at www.competitionbureau.gc.ca or contact National at 1-877-673-5373 or www.nationalhomeservices.ca.

CT-

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

AND IN THE MATTER of an inquiry commenced pursuant to subparagraph 10(1)(a) of the *Competition Act* with respect to certain alleged deceptive marketing practices of National Energy Corporation under paragraph 74.01(1)(a) of the *Competition Act*;

AND IN THE MATTER of the filing and registration of a Consent Agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION
Applicant

- and -

NATIONAL ENERGY CORPORATION
and JUST ENERGY GROUP INC.
Respondents

CONSENT AGREEMENT

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