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THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF the acquisition of Tervita Corporation by SECURE Energy Services Inc;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 92 of the *Competition Act*;

BETWEEN

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

RESPONSE OF SECURE ENERGY SERVICES INC.

PART I: OVERVIEW

1. SECURE Energy Services Inc. ("**SECURE**") opposes the Commissioner of Competition's (the "**Commissioner**") application pursuant to section 92 of the *Competition Act* and denies that the Commissioner is entitled to any of the relief sought in the Amended Notice of Application.

2. The Commissioner has improperly defined the relevant product and geographic markets and asserted a substantial lessening or prevention of competition where there is none. He has also has not properly considered the significant efficiencies generated by the merger of SECURE and Tervita Corporation ("**Tervita**"), which dwarf any alleged anticompetitive effects.

3. The Commissioner of Competition has failed three times to block closing of the Transaction, dissolve the Transaction, or require SECURE to hold separate assets of the former Tervita business. The Commissioner now requests a final order dissolving the Transaction, which closed on July 2, 2021. Such an order is neither warranted nor necessary because:

- (a) the Transaction has not and will not prevent or lessen competition substantially in Canada; and
- (b) the Transaction has and will continue to result in substantial gains in efficiency that exceed and offset any alleged anti-competitive effects.

PART II: FACTS ADMITTED AND DENIED

4. Except for the allegations in paragraphs 7-10, 11, 13, and 16 of the Amended Notice of Application, SECURE denies all the Commissioner's allegations unless expressly admitted below. SECURE further denies that the Commissioner is entitled to the relief sought in paragraph 1 of the Amended Notice of Application or to any relief whatsoever.

PART III: STATEMENT OF FACTS

A. The Transaction and Rationale

5. SECURE is a publicly traded company headquartered in Calgary, Alberta and listed on the Toronto Stock Exchange ("TSX"). SECURE provides solutions to upstream oil and natural gas companies operating in Western Canada and certain regions in the U.S. The majority of SECURE's customers are large, sophisticated oil and gas producers.

6. Pursuant to an Arrangement Agreement in accordance with the *Business Corporations Act (Alberta)* dated March 8, 2021, SECURE acquired Tervita effective July 2, 2021 (the "**Transaction**"). Under the Plan of Arrangement, SECURE acquired all the issued and outstanding shares of Tervita upon completion of the Transaction and then amalgamated with Tervita. Following the Transaction, former SECURE and former Tervita shareholders own approximately 52% and 48%, respectively, of SECURE post-

merger. The Plan of Arrangement was approved by the Alberta Court of Queen's Bench on June 18, 2021.

7. As a result of the Transaction, SECURE is becoming more efficient to adapt to and survive fundamental changes in the oil and gas industry. Since 2014, Western Canada's entire oil and gas sector has been marked by significant volatility and consolidation. This wave was caused first by a global slump in prices, significant supply changes, and more recently, by commitments from governments, investors, and operators to lower carbon emissions, focus on renewable energy and, ultimately, achieve a transition to net zero emissions.

8. SECURE has already achieved and will continue to achieve significant efficiencies from the Transaction, which would be lost if the order sought by the Commissioner is granted.

9. More importantly, the Transaction is critical to SECURE's efforts to support customers through this period of fundamental industry change. The Transaction has resulted in an improved and more cost-effective infrastructure to support a growing and consolidating customer base and shared commitments to economic, social, and governance ("**ESG**") initiatives, safety, performance, and customer service. For that reason, the Transaction is supported by many of SECURE's customers.

B. Operations of SECURE

10. The Transaction generates significant synergies and efficiencies in large part because the asset bases and operations of SECURE and the former Tervita business were underutilized. SECURE and formerly Tervita both provided waste treatment and disposal services, environmental remediation services, and oil terminalling and marketing services to upstream oil and gas producers.

11. SECURE's customers can and do provide these same services. Oil and gas producers dispose of far more water at their owned wells than does SECURE. SECURE operates only a small proportion of water disposal wells in Western Canada, with the vast

majority being operated by producers. Some producers also own and operate landfills. SECURE and formerly Tervita have lost significant waste volumes to customer self-supply in recent years.

12. Due to customer insourcing and reduced drilling activity, many of SECURE's assets (including those of the former Tervita business) remain underutilized, a source of significant inefficiency and loss to the Canadian economy. The combination of these underutilized assets will enable SECURE to suspend many of these facilities without reducing output.

**PART IV: TRANSACTION DOES NOT PREVENT OR LESSEN COMPETITION
SUBSTANTIALLY**

13. Contrary to the allegations in the Amended Notice of Application, the Transaction has not and will not prevent or lessen competition substantially, because it does not and will not provide SECURE the ability to exercise market power.

A. Relevant Product Markets

14. The Commissioner raises five relevant product markets in his Section 92 Application:

- (a) supply of waste processing and waste treatment services by TRDs,
- (b) disposal of solid oil and gas waste into industrial landfills,
- (c) disposal of produced water and waste water disposal wells by third-party waste service providers,
- (d) disposal of naturally occurring radioactive materials ("**NORM Waste**") into landfills permitted to accept this type of solid waste, and
- (e) provision of environmental services.

15. The Commissioner's market definition is deficient for at least three reasons:

- (a) First, the relevant product markets include first-party produced water and waste water disposal wells and other waste service sites owned by SECURE and the former Tervita's customers as they are proper substitutes for third-party sites. SECURE and the former Tervita's customers frequently compare and weigh the costs of using third-party services and the internal cost to self-supply these services.
- (b) Second, the relevant product market for the disposal of solid oil and gas waste includes municipal solid waste landfills and bioremediation sites in addition to industrial landfills.
- (c) Third, the relevant product market for the disposal of NORM Waste includes NORM-certified caverns, and Class I landfills, which are each substitutes for NORM-certified landfills.

B. Relevant Geographic Market

16. The Commissioner pleads at paragraph 29 of the Amended Notice of Application that the relevant geographic market is the "aggregated locations of customers for Waste Services in the Western Canadian Sedimentary Basin that previously benefitted from the competition between SECURE and Tervita."

17. The Commissioner's proposed geographic market is unclear. He has set out no measurable or defined area in his Amended Notice of Application. SECURE reserves its right to respond to any further specified geographic market alleged by the Commissioner.

C. No Barriers to Entry

18. Contrary to the allegations in the Amended Notice of Application, there are no material barriers to entry or expansion in any relevant product or geographic market.

D. Effective Remaining Competition

19. Contrary to the Commissioner's suggestions, SECURE continues to face effective remaining competition from first party producers and third-party waste disposal services providers. Third-party competitors include but are not limited to Medicine River Oil Recyclers, Aqua Terra, Albright, Catapult, Wolverine/Voda Inc., Aspen Water Management, Cancen, Clean Harbors, Dragos, Energy Transfer, Envolve, Recover Energy Services, RemedX, Rush Energy Services, Tidewater, and Topaz, all of whom are currently actively competing against SECURE for waste volumes. These competitors are capable of expanding their capacity in response to any alleged price increases, and oil and gas producers can and do sponsor the entry of new and expansion of existing service providers.

20. Similarly, the market for environmental services is highly fragmented, with numerous competitors and low barriers to entry. Such competitors include but are not limited to Waste Management, Clean Harbors, GFL Environmental, Aecom, and ClearStream Energy.

21. SECURE has no incentive to foreclose or turn away waste volumes from third-party environmental service providers or to drive customers to use SECURE's environmental services through bundling with waste services. SECURE's waste disposal business is characterized by relatively higher fixed costs than variable costs, such that securing waste volumes is critical for the profitability of its business. Furthermore, waste volumes from third-party environmental service providers are normally attributable to their originating oil and gas producers, who are customers of SECURE. Any attempted foreclosure or interference with their use of rival environmental services providers would have significant negative long-term impacts on SECURE's reputation and relationships with oil and gas producers.

E. Customers' Countervailing Power

22. The majority of SECURE's revenues are from customers that are large, sophisticated oil and gas producers. These customers purchase significant disposal volumes from SECURE and command significant bargaining power as a result.

23. Nearly all SECURE's revenues come from servicing producers who operate across multiple geographies and/or utilize multiple service lines offered by SECURE. These customers can credibly threaten to punish SECURE for any price increases in a particular geography or on a particular service line by moving waste volumes in other geographies or service lines to competing service providers, or by self-supplying the disposal of such waste. The volume of waste that these customers provide, the incremental volume they could provide, and the risk of losing volume across products and facilities providers these customers with significant economic power.

24. Customers' ability to constrain prices is further enhanced by their presence as counterparties for the purchase and resale of crude oil, where they supply critical inputs necessary for midstream infrastructure providers' energy marketing (terminalling) business. This is especially significant for SECURE, as one of its key business strategies is to maximize oil purchase and resale volumes.

F. Ability to Self-Supply

25. The majority of SECURE's customers are capable of self-supplying nearly all waste disposal services internally. Many customers currently self-supply waste disposal services. In particular, oil and gas producers own substantial infrastructure for waste water disposal. For example, producers internally dispose of the vast majority of waste water volumes. SECURE operates only a small proportion of facilities with produced water and waste water disposal capabilities and has lost significant water disposal volumes to customers' self-supply over the past several years.

26. Produced water and waste water represent the largest share of revenue for SECURE of all waste streams. Customers' ability to self-supply these volumes creates significant bargaining power and constrains SECURE's pricing. Customers also can and

do self-supply landfill, liquid waste, and energy marketing services, which similarly constrain pricing.

G. No Anticompetitive Effects

27. SECURE denies that the Transaction has or will cause the anticompetitive effects alleged in the Amended Notice of Application. First, SECURE denies that the Transaction will cause increased prices or decreased levels of customer service as alleged in the Amended Notice of Application. In the alternative, any alleged price increases from the Transaction (which are denied) would not result in any lost allocative efficiency (or deadweight loss) to the Canadian economy or any other anticompetitive effects.

28. Market demand for waste disposal is a function of the level of oil and gas production activity in the Western Canadian Sedimentary Basin (“WCSB”). Waste is generated as a by-product of drilling, production, well remediation and reclamation activity, among other activities. Canadian oil and gas producers are price-takers on the global market, and global oil and gas prices are the primary driver of the level of exploration and drilling activity. As a result, any alleged price increase in waste disposal services (which SECURE strongly denies it has the ability to implement), would result in little to no change in output or corresponding deadweight loss to the Canadian economy.

29. Moreover, the majority of SECURE’s customers are large, sophisticated oil and gas producers. Any alleged price increase for waste disposal services (which SECURE strongly denies it has the ability to implement) would be a wealth transfer between corporations, and not socially adverse. No end-consumers or vulnerable individuals or entities are affected by the prices of oil and gas waste disposal services.

H. No Prevention of Competition for Wonowon

30. Prior to the Transaction, SECURE’s proposed landfill in the Wonowon area was highly speculative and dependent on several important contingencies, including internal approvals for funding, receipt of numerous approvals from external regulatory bodies, and consultations with Indigenous peoples. In that regard, the Blueberry River First Nations have sought a moratorium on all further activity in the region, and the B.C. Supreme Court

issued a recent decision finding that the cumulative impact of industrial development in the region had violated the treaty rights of the Blueberry River First Nations. As such, the potential entry by SECURE remained highly uncertain and the timeframe for entry could not be discernible, and SECURE cannot be said to have been likely to enter but for the Transaction. In the alternative, the Transaction will lead to significant efficiencies and other benefits in the Wonowon area, including saving the costs of constructing and operating a new facility.

PART V: EFFICIENCIES ARISING FROM THE TRANSACTION

31. The Transaction has already generated and will continue to generate significant efficiencies to the Canadian economy, cognizable under section 96 of the *Competition Act*. SECURE and the former Tervita business operated many facilities that were significantly below capacity. The Transaction will allow SECURE to consolidate its operations and better serve its customers through increased efficiency, lower prices, a more stable balance sheet, and a greater ability to meet its customers' ESG goals.

PART VI: RELIEF SOUGHT

32. As described above, the Transaction is not likely to result in any substantial lessening or prevention of competition in any potential relevant markets across the WCSB. The efficiencies from the Transaction will exceed and offset any alleged anticompetitive effects (which SECURE strongly denies). In the alternative, dissolution of the Transaction is not necessary to address the anticompetitive effects alleged in the Amended Notice of Application.

33. SECURE requests an order dismissing the Application in its entirety and awarding it costs in the highest possible scale.

PART VII: CONCISE STATEMENT OF ECONOMIC THEORY

34. SECURE's Concise Statement of Economic Theory is attached as Schedule A.

PART VIII: LOCATION AND CONDUCT OF THE HEARING

35. SECURE agrees that the Application may be heard in Ottawa, Ontario, subject to public health guidance regarding the ongoing COVID-19 pandemic in effect at the time of the hearing. In the alternative, SECURE asks that the Application be heard by videoconference (Zoom).

Dated at Toronto, Ontario, this 15th day of September, 2021



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SCHEDULE "A" – CONCISE STATEMENT OF ECONOMIC THEORY

1. Oil and gas producers generate liquid and solid waste as a by-product of drilling, production, well remediation and reclamation activities. Producers can treat, store, or dispose of this waste internally or through third-party service providers such as SECURE and its competitors.
2. Any attempt by SECURE to raise prices or decrease levels of customer service for waste disposal services would be counteracted by the strong countervailing buyer power of its customers, the ability of its customers to self-supply waste disposal services, the ability of customers to sponsor entry or expansion by new or existing competitors, and strong competition for these services.
3. The majority of SECURE's revenues are from customers that are large, sophisticated oil and gas producers. They use their bargaining power to negotiate volume discounts and discounts for multiple services and the use of multiple disposal facilities.
4. Nearly all SECURE's revenues come from servicing producers who operate across multiple geographies and/or utilize multiple service lines offered by SECURE. These customers can credibly threaten to punish SECURE for any price increases in a particular geography or on a particular service line by moving waste volumes in other geographies or product lines to competing service providers, sponsoring entry by competing service providers, or by self-supplying the disposal of such waste. The volume of waste that these customers provide, the incremental volume they could provide, and the risk of losing volume across products and facilities provides these customers with significant bargaining power.
5. Many customers currently self-supply waste disposal services. In particular, oil and gas producers own substantial infrastructure for produced water and waste water disposal. SECURE operates only a small proportion of facilities with produced water and waste water disposal capabilities. Produced water and waste water represent the largest share of revenue for SECURE of all waste streams. Customers' ability to self-supply these volumes creates significant bargaining power and constrains SECURE's pricing. Customers also can and do self-supply landfill, liquid waste, and energy marketing services, which similarly constrain SECURE's pricing of these services.
6. SECURE has several competitors for waste disposal services in the WCSB. These competitors further constrain SECURE's pricing as producers are able to shift volumes to competitors in response to price increases and sponsor entry or expansion by new or existing competitors.

7. SECURE has no ability or incentive to foreclose rival environmental service providers or to drive customers to use SECURE's environmental services through bundling with waste services. SECURE's waste disposal business is characterized by relatively higher fixed costs than variable costs, such that maximizing waste disposal volumes (regardless of their source) is critical for the profitability of its business. Furthermore, waste volumes are attributable to their originating oil and gas producers, who are current or potential customers of SECURE. Any attempted foreclosure or interference with their use of rival environmental services providers would have significant negative long-term impacts on SECURE's reputation and relationships with oil and gas producers.

8. In any event, while SECURE does not have the ability to raise prices for the above reasons, any increase in prices would result in few to no anticompetitive effects, including little to no deadweight loss. Among other things, the market demand for waste disposal services is a function of oil and gas exploration activity; more "waste" is not generated by lowering waste disposal prices. Any hypothetical increase in the price of waste disposal services would therefore result in little to no change in output and little to no deadweight loss.

9. Further, the majority of SECURE's customers are large, sophisticated oil and gas producers. Any hypothetical price increase for waste disposal services would represent only a socially neutral wealth transfer between corporations and would not be socially adverse.

10. The Transaction will generate significant efficiencies to the Canadian economy. Many of the facilities of SECURE and the former Tervita business were operating significantly below capacity due to declining oil and gas activity within the WCSB due to falling global prices and an international shift to net-zero carbon emissions. The Transaction will allow SECURE to operate significantly more efficiently, with a more stable balance sheet, and be able to better service its customers through lower prices, improved service, and a greater ability to realize customers' ESG goals.

11. These efficiencies will significantly outweigh any alleged anticompetitive effects generated by the Transaction (which are strongly denied by SECURE).