

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 by Secure Energy Services Inc. of all of the issued and outstanding shares of Tervita Corporation;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SECURE ENERGY SERVICES INC.

Respondent

AGREED STATEMENT OF FACTS

Secure Energy Services Inc.

1. Secure Energy Services Inc. ("**Secure**") is a publicly traded Canadian company headquartered in Calgary, Alberta and listed on the Toronto Stock Exchange.
2. Secure divides its business into two segments: Midstream Infrastructure and Environmental and Fluid Management.
3. Secure's Midstream Infrastructure business segment includes a network of midstream processing and storage facilities, crude oil and water pipelines, and crude by rail terminals located in Western Canada, North Dakota and Oklahoma.

4. Environmental and Fluid Management segment includes a network of owned, operated and industrial landfills and other environmental and chemical products and services.
5. Pre-transaction, Secure owned and operated 18 full service terminals (“FSTs”).
6. Pre-transaction, Secure owned and operated seven landfills, one of which was a Class I landfill.
7. Pre-transaction, Secure owned and operated 15 standalone disposal wells.
8. Secure’s FSTs and water disposal wells are operated under its Midstream Infrastructure segment.
9. Secure’s landfills are operated under its Environmental and Fluid Management segment.
10. Across all of its lines of businesses, Secure’s audited consolidated financial statements indicate that it generated revenues of \$3.76 billion in fiscal 2021, \$1.82 billion in fiscal 2020, and \$3.07 billion in fiscal 2019.
11. Across all of its lines of businesses, Secure’s audited consolidated financial statements indicate that it generated net loss of \$204 million in fiscal 2021, a net loss of \$87.19 million in fiscal 2020, and a net profit of \$191,000 in fiscal 2019.
12. Secure’s Energy Marketing business unit is a part of its Midstream Infrastructure segment.
13. Secure generates a gross margin of zero on the purchase and resale of oil.
14. Across all of its lines of business excluding Energy Marketing, Secure’s audited consolidated financial statements indicate that it generated revenues of \$893 million in fiscal 2021, \$460 million in fiscal 2020, and \$632 million in fiscal 2019.

Tervita

15. Prior to July 2, 2022, Tervita was a publicly traded Canadian environmental services company based in Calgary, Alberta.

16. Tervita operated two business segments: Energy Services and Industrial Services.
17. Energy Services included the treatment, recovery and disposal of wastes that result from oil and gas production.
18. Industrial Services comprised of other types of waste, recycling and environmental services accessed by a broader range of industries.
19. Pre-transaction, Tervita owned and operated 44 treatment, recovery and disposal facilities (“TRDs”).
20. Pre-transaction, Tervita owned and operated three cavern disposal facilities.
21. Pre-transaction, Tervita owned and operated 18 landfills, as well as one landfill it operated under a contract and three landfills it marketed under contract for other landfill operators.
22. Pre-transaction, Tervita owned and operated eight standalone disposal wells.
23. Tervita operated all of the assets described in paragraphs 20, 21, 22, and 23 under its Energy Services segment.
24. Across all of its lines of businesses, Tervita’s audited consolidated financial statements indicate that it generated revenues of \$1.417 billion in fiscal 2020, and \$2.323 billion in fiscal 2019.
25. Across all of its lines of businesses, Tervita’s audited consolidated financial statements indicate that it generated a net loss of \$43 million in fiscal 2020, and a net loss of \$116 million in fiscal 2019.
26. Tervita generated a gross margin of zero on the resale of oil.

The Transaction

27. Pursuant to an Arrangement Agreement dated March 8, 2021, Secure and Tervita proposed an all-share transaction.

28. Under the Plan of Arrangement, Secure would acquire all of the issued and outstanding shares of Tervita and, upon completion of the transaction, Secure and Tervita shareholders would own approximately 52% and 48%, respectively, of Secure.
29. The Plan of Arrangement was approved by the Alberta Court of Queen's Bench on June 18, 2021.
30. Secure completed its acquisition of Tervita on July 2, 2021 (previously defined as the "**Transaction**").

Industry Background

31. Various forms of waste are generated in connection with the development, operation, remediation and reclamation of oil and gas wells.
32. Types of waste generated by oil and gas producers includes but is not limited to produced water, waste water, sludge, drill cuttings, contaminated soil, and other chemicals.
33. Waste is generated when drilling a well.
34. Waste generated when a well is drilled includes but is not limited to drilling fluids and drill cuttings.
35. Waste is generated when completing a well.
36. The process of completing a well includes but is not limited to setting up a steel pipe casing at the mouth of the well, pouring cement into the space between the casing and the wellbore walls, and installing other wellbore equipment necessary for production to begin.
37. Completing a well may also involve the use of well stimulation techniques that increase the level of well production such as hydraulic fracturing.
38. The hydraulic fracturing phase produces various waste such as fracking fluids and sand.

39. Fluids produced during the completion phase may be mixed with oil, some of which can be recovered and resold. There is no guarantee that all oil can be recovered.
40. Generally, waste is generated from producing wells but not all producing wells regularly generate waste.
41. NORMs are naturally occurring radioactive materials.
42. Produced water is naturally occurring water that comes out of the ground along with oil and gas. However, produced water may also refer to water that contains remnants of the drilling and fracking process, depending on how the producer defines this term.
43. An emulsion is a mixture of oil, water, gas, and other substances.
44. Waste is generated when a well is being cleaned, this is referred to as a “workover” process.
45. Waste generated during the turnaround process includes sludges and other waste collected at the tank bottoms.
46. Generally waste is generated when reclaiming a well site, although the amount and type of waste can vary greatly depending on the well.
47. The most common waste when remediating and reclaiming a well site is contaminated soil.
48. Some oil and gas producers use SECURE’s waste disposal facilities in multiple locations and for multiple waste disposal services.

Regulatory Environment

49. Alberta Environment and Parks (“**AEP**”) supports environmental conservation and protection, sustainable economic prosperity, quality of life, and outdoor recreation opportunities.

TRDs and FSTs

50. The terms TRD and FST can be used interchangeably and are functionally substitutable.
51. TRD's provide a combination of clean oil terminalling, custom treating of crude oil, crude oil marketing, crude oil purchase and resale, produced and waste water disposal and oilfield waste processing. All Secure TRD's except one are connected to a Class IB disposal of produced and waste water.
52. At TRD's, each of the solids, water, and oil components are separated using a centrifuge or other thermal process, as well as gravity/settling.
53. The oil recovered from the waste will be delivered via pipeline to a gathering pipeline and connect to a main pipeline.
54. If a TRD is not connected via terminal to a pipeline, the oil will be trucked to a facility which has a terminal.
55. TRDs have disposal wells on site or close by to dispose of water.
56. Oil that is extracted from waste streams at TRDs is marketed and sold.

Landfills

57. Class II landfills are constructed with a variety of features, including, among others, a multi-layer containment barrier consisting of high-density polyethylene for primary containment and an engineered clay liner for secondary containment, in-cell leachate collection and removal systems and disposal, groundwater monitoring, and surface run-on and run-off controls.
58. Secure's Pembina landfill is a Class I landfill, which is also approved for disposal of NORM waste.
59. Industrial landfills can receive solid waste from TRDs.
60. Industrial landfills can receive solid waste from oil and gas producers.

61. Solid waste generated by oil and gas producers include contaminated soil, drill cuttings, and produced sand.
62. The majority of solid waste generated by oil and gas producers in Alberta is non-hazardous and disposed of in Class II landfills.
63. Solid waste containing NORMs can be disposed of in a landfill licensed to accept NORM waste.
64. Secure's Pembina landfill in Alberta and its Silverberry landfill in Northeastern British Columbia are licensed to accept NORM waste.

Caverns

65. Caverns are deep sealed salt formations that can also store liquids with high pH content, processed sludge, and other waste types.
66. The waste disposed of in caverns includes but is not limited to drill mud, drill cuttings, sludges, waste water, produced water, and certain NORM contaminated solids.
67. There are five operating cavern facilities. Most cavern facilities have multiple caverns.
68. Secure acquired three caverns from Tervita as a result of the Transaction, including the Hughenden cavern in Alberta, the Lindbergh cavern in Alberta and the Unity cavern in Saskatchewan.
69. White Swan owns a cavern in Atmore, Alberta.
70. Plains Environmental owns a cavern in Melville, Saskatchewan.
71. Two caverns can take NORM waste, provided it is in slurry form, which are Secure's Unity cavern and Plains' Melville cavern.

Disposal Wells

72. Disposal wells are used to dispose of produced or waste water.

73. A standalone disposal well is a facility that only provides water disposal services (i.e. it is not co-located with a TRD).
74. Disposal wells are classified as either Class II or Class IB.
75. Class II wells are permitted to dispose of produced water that is a by-product of oil and natural gas production and originate from a producing formation.
76. Class 1B disposal wells can accept Class II fluids plus additional specific common oilfield liquid waste streams that are produced during drilling completion and production operations.
77. Oil and Gas production generates produced water.
78. Oil and Gas production generates waste water.
79. A standalone water disposal well typically operates as follows: (1) produced and waste water is delivered to the facility by tank truck; (2) produced and waste water is temporarily stored in tanks prior to being filtered to remove any suspended solids and crude oil; and (3) the treated water is injected into the disposal well.

Newalta Acquisition

80. Tervita acquired Newalta Corporation (“**Newalta**”) in July 2018 (the “**Tervita/Newalta Transaction**”).
81. Tervita did not receive a ‘no action letter’ in connection with the Tervita/Newalta Transaction.
82. Tervita did not receive an advance ruling certificate in connection with the Tervita/Newalta Transaction.
83. The Commissioner did not bring any application under the *Competition Act* seeking a remedy in connection with the Tervita/NewAlta Transaction.

Pricing

84. Secure has price lists for its facilities which are delineated by waste stream.

85. Secure's pricing at its TRDs are not uniform across all locations.
86. Secure's pricing at its landfills are not uniform across all locations.
87. Secure's pricing at disposal wells are not uniform across all locations.
88. SECURE has entered into and continues to have Master Service Agreements with some of its customers.
89. Secure's customers generally arrange for transportation of waste themselves, and do not pay Secure for transportation costs.
90. Unless there is a pipeline connection for the purpose of transporting waste streams, Secure receives waste at its facilities via truck.

Orphaned Wells

91. An orphaned well is a well that no longer has a legal or financial owner.
92. There exist both orphaned and abandoned well sites throughout the WCSB.
93. The OWA is a customer of Secure.
94. The OWA is a former customer of Tervita.
95. In 2020, the federal government announced a \$1.7 billion stimulus package to help fund the closure of orphaned and inactive wells in the WCSB.

Canadian oil and gas industry

96. SECURE's customers are predominantly oil and gas producers.
97. There have been at least 52 transactions involving the consolidation of oil and gas producers since 2017.
98. The Canadian Net-Zero Emissions Accountability Act became law on June 29, 2021, and represents Canada's legislative commitment to achieve "net-zero" emissions by 2050.

Self supply of waste disposal services

99. Some of SECURE's customers operate their own waste disposal facilities.
100. Of those customers that operate their own waste disposal facilities, some also allow other oil and gas producers to use their waste disposal facilities.
101. Oil and gas producers own more disposal wells than SECURE in the Western Canadian Sedimentary Basin.
102. CNRL, Cenovus, Imperial Oil, and Suncor are oil and gas producers that own landfills in the Western Canadian Sedimentary Basin.
103. Oil and gas producers may include building disposal infrastructure as part of their long term plans.
104. SECURE's customers can recycle or reuse water in their operations in certain circumstances.