



Canada Energy
Regulator

Régie de l'énergie
du Canada

Canada Energy Regulator Reasons for Decision

Kingston Midstream Westspur Limited
RH-003-2020

Canada Energy Regulator Reasons for Decision

In the Matter of

Kingston Midstream Westspur Limited

Secure Energy Services Inc. Application for Service and Suitable and Adequate Interconnection
Facilities on the Westspur Pipeline

RH-003-2020
July 2021

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Glossary of Terms, Abbreviations and Units

Alida Delivery	Delivery of oil from the Westspur Pipeline to the Secure Alida Terminal via the Delivery Connection
Alida Receipt	Receipt, transport, and delivery of crude oil offered by Secure via the Receipt Connection for transmission on the Westspur Pipeline
Application	Secure Energy Services Inc. application dated 30 December 2019 to allow Secure to receive crude oil from, and deliver crude oil to, the Westspur Pipeline owned by Kingston Midstream Westspur Limited via the Secure Alida Terminal
Broadbill	Broadbill Energy Inc.
Canadian Natural	Canadian Natural Resources
Cardinal	Cardinal Energy Ltd.
CER	Canada Energy Regulator
CER Act	<i>Canadian Energy Regulator Act</i>
Commission	Commission of the Canada Energy Regulator
Crescent Point	Crescent Point Energy
Delivery Connection	An interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of delivering crude oil from the Westspur Pipeline to the Secure Alida Terminal
Equalization Procedure	A procedure for making adjustments to the value of individual deliveries made to a commingled crude or condensate stream based on the difference in quality between the delivered quality and the calculated weighted average quality of the stream

Former Connection Agreement	Petrolama's interconnection agreement with Kingston Saskatchewan's predecessor Enbridge Pipeline (Saskatchewan) Inc. to deliver crude oil to and from the Secure Alida Terminal.
Kingston	Kingston Midstream Westspur Limited
m	metre
m ³	cubic metre
MIW	Manitoba Interconnect Westspur
NEB	National Energy Board (predecessor to the CER)
NEB Act	<i>National Energy Board Act</i>
Petrolama	Petrolama Energy Canada Inc., original owner of the Secure Alida Terminal.
Priddle Report	An independent expert report prepared by Mr. Roland Priddle.
Receipt Connection	An interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of receiving, transmitting and delivering oil offered by Secure for transmission on the Westspur Pipeline
Ridgeback	Ridgeback Resources Inc.
Saskatchewan Pipeline Gathering System	A network of provincially regulated oilfield gathering systems and terminal facilities that deliver crude oil to the Westspur Pipeline, owned by Kingston Midstream Saskatchewan Limited
Secure	Secure Energy Services Inc.
Secure Alida Terminal	Secure Alida Crude Oil Terminal
Settlement Agreement	A negotiated agreement between TEML, TEML's affiliates, including TEML Westspur, and eight producers to resolve issues from the Crescent Point Complaint, and the 2017 and 2018 Saskatchewan Court of Queen's Bench actions
TEML	Tundra Energy Marketing Limited

TEML Westspur	Former name of Kingston Midstream Westspur Limited
Vermilion	Vermilion Energy Inc.
Westspur Pipeline	Owned and operated by Kingston Midstream Westspur Limited, the Westspur Pipeline transports crude oil and condensate from Southeast Saskatchewan to the Enbridge Mainline at a point near Cromer Manitoba.
Westspur Settlement	According to Kingston, Enbridge Westspur established a market based tolling methodology with shipper approval via the "Westspur Settlement", effective May 2013.
Westspur Tariff	The charges and rules and regulations governing the transportation of crude petroleum on the Westspur Pipeline. Includes the Westspur Rules and Regulations
Weyburn Pipeline	A provincially regulated pipeline that delivers crude oil to the Westspur Pipeline owned and operated by Kingston Midstream Weyburn Limited

1 Introduction

1.1 The Application

On 30 December 2019, the Canada Energy Regulator (**CER**) received an application from Secure Energy Services Inc. (**Secure**) for an order or orders, pursuant to sections 32, 34, 226 and 239 of the *Canadian Energy Regulator Act* (**CER Act**), to allow Secure to receive crude oil from, and deliver crude oil to, the Westspur Pipeline owned by Kingston Midstream Westspur Limited (**Kingston**).

Specifically, Secure requested access to the Westspur Pipeline at Secure's Alida Crude Oil Terminal (**Secure Alida Terminal**) and applied to the Commission of the CER (**Commission**) for orders:

- a) directing Kingston to provide adequate and suitable facilities for an interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of delivering crude oil from the Westspur Pipeline to the Secure Alida Terminal (**Delivery Connection**), if these facilities are determined to not already exist, or declare that the existing facilities constitute a Delivery Connection, pursuant to subsection 239(3) of the CER Act;
- b) directing Kingston to provide adequate and suitable facilities for an interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of receiving, transmitting and delivering oil offered by Secure for transmission on the Westspur Pipeline (**Receipt Connection**), if these facilities are determined to not already exist, or declare that the existing facilities constitute a Receipt Connection, pursuant to subsection 239(3) of the CER Act;
- c) directing Kingston to deliver oil to the Secure Alida Terminal from the Westspur Pipeline via the Delivery Connection (**Alida Delivery**), and to receive, transport and deliver crude oil offered by Secure via the Receipt Connection for transmission on the Westspur Pipeline (**Alida Receipt**), pursuant to subsection 239(1) and section 34 of the CER Act;
- d) prescribing just and reasonable terms for the Alida Delivery and the Alida Receipt, pursuant to section 226 of the CER Act, including:
 - i) service on terms that are not unjustly discriminatory and consistent with Kingston's published tariff for the Westspur Pipeline; and
 - ii) just and reasonable tolls for the Alida Delivery and Alida Receipt calculated in a manner determined by the Commission.

1.2 Summary of Disposition

Upon careful consideration of all the evidence and submissions on the record, the Commission decided the following:

- Pursuant to subsection 239(1), the Commission directs Kingston to provide Alida Delivery and accept Alida Receipt on the Westspur Pipeline.

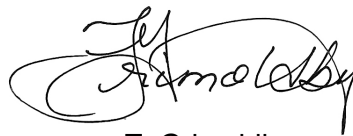
- Pursuant to subsection 239(3), the Commission directs Kingston to provide adequate and suitable facilities connecting the Westspur Pipeline to the Secure Alida Terminal in the form of the Delivery Connection and Receipt Connection.
- Pursuant to section 226, the Commission directs Kingston to file an updated Westspur Tariff that includes Secure's Alida Terminal as a receipt and delivery point, as well as the tolls to and from the Secure Alida Terminal.
- Pursuant to sections 226 and 230, \$0.10/cubic metre (m³) is a just and reasonable toll for the Receipt Connection and the Delivery Connection.
- Pursuant to sections 32 to 34 and 226, a process to determine whether the Westspur Pipeline should continue to be designated as a Group 2 Company for the purpose of financial regulation under the CER Act has been initiated by the Commission. The Commission also recommends a financial regulatory audit for the Westspur Pipeline.

Order MO-020-2021 in Appendix III gives effect to these decisions.

The Commission's reasons for these decisions are detailed below. Chapter 2 contains the background to the Application and procedural summary of this hearing. In Chapter 3, the Commission considers Kingston's common carriage obligation arising from subsection 239(1). In Chapter 4, the Commission addresses the extension of facilities. The tolls and terms of service are covered in Chapters 5 and 6, respectively. In Chapter 7, the Commission sets out additional direction and recommendations to address other concerns that arose in hearing Secure's Application.



S. Luciuk
Presiding Commissioner



T. Grimoldby
Commissioner



W. Jacknife
Commissioner

Calgary, Alberta
July 2021

2 Background

2.1 The Westspur Pipeline

The Westspur Pipeline commenced operations in 1957 and currently transports crude oil and condensate from Southeast Saskatchewan to a point near Cromer, Manitoba (See Figure 1 below).

Kingston is regulated by the CER as a Group 2 company¹ and is the current owner and operator of the Westspur Pipeline under Certificate OC-4. Crude oil is delivered to the Westspur Pipeline from the provincially regulated Weyburn Pipeline, and the Saskatchewan Pipeline Gathering System, a network of provincially regulated oil field gathering systems and terminal facilities. The Westspur Pipeline delivers crude oil to the Manitoba Interconnect Westspur (**MIW**) and provides access to the Enbridge Mainline for crude oil to be delivered to downstream markets in Eastern Canada and PADD II and PADD III (Petroleum Administration for Defense District) regions in the United States. The Westspur Pipeline also delivers crude oil to the Manitoba Interconnect Cromer through in-stream purchases, made by Kingston Marketing, which do not return to the Westspur Pipeline. Each of the referenced pipeline systems, other than the Enbridge Mainline, is operated by an affiliate of Kingston.²

Currently product of the same crude type shipped on Westspur Pipeline is not batched or segregated.

In June 2017, Crescent Point Energy (**Crescent Point**) filed a complaint with the National Energy Board (**NEB**) regarding operational practices on the Westspur Pipeline, then owned and operated by TEMPL Westspur Pipelines Limited (**TEMPL Westspur**). A proceeding, RHW-002-2017, was established to hear the complaint.

In 2019, a settlement agreement was reached among Tundra Energy Marketing Limited (**TEML**), TEMPL's affiliates (including TEMPL Westspur), and eight producers (**the Settlement Agreement**). As a result of the Settlement Agreement, Crescent Point withdrew its complaint and the hearing ended without a decision by the NEB on the merits of the complaint. The Settlement Agreement was not filed with, or approved by, the NEB.³

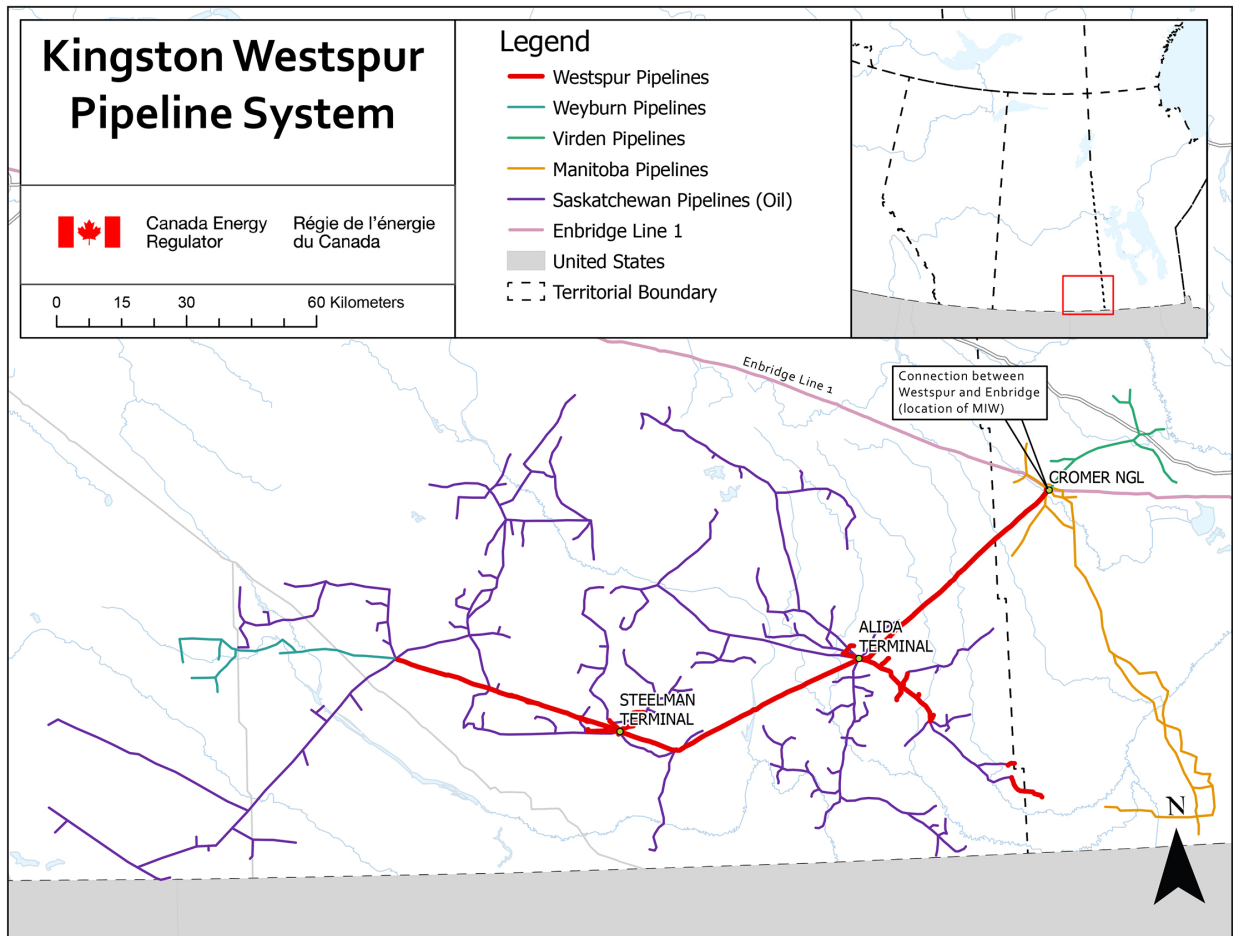
As part of the Settlement Agreement, and in accordance with a new code of conduct that was filed with the NEB, TEMPL and its affiliates performed a corporate restructuring. TEMPL was rebranded as Kingston Marketing Limited (**Kingston Marketing**) and TEMPL Westspur became Kingston Midstream Westspur Limited.

¹ The regulation of Group 2 companies is normally carried out on a complaint basis. In this case, Secure filed an application requesting the relief set out above.

² The Saskatchewan Pipeline Gathering System is owned by Kingston's affiliate Kingston Midstream Saskatchewan Limited and the Weyburn Pipeline is owned and operated by Kingston's affiliate Kingston Midstream Weyburn Limited.

³ As part of the corporate restructuring, TEMPL Saskatchewan also became Kingston Saskatchewan, and TEMPL Weyburn became Kingston Weyburn.

Figure 1 – Map of the Kingston Westspur Pipeline System



This map is a graphical representation intended for general informational purposes only. Map produced by the CER, May, 2021, Last updated on May 4

2.2 Secure Energy Services Inc.

Secure is a publicly traded, integrated energy company that provides service to upstream oil and natural gas companies operating in the Western Canadian Sedimentary Basin and North Dakota. Secure offers over 100 comprehensive, diverse services across three divisions that provides customers with midstream infrastructure, environmental services, and technical services.

Since June 2016, Secure has owned and operated the Secure Alida Terminal. The Secure Alida Terminal was originally owned by Petrolama Energy Canada Inc. (**Petrolama**) and began operations on 1 August 2013.

The Secure Alida Terminal is connected to the Kingston-owned Alida Terminal, which is approximately 350 metres (m) from the Secure Alida Terminal, via two provincially regulated pipelines and related infrastructure. Petrolama had an interconnection agreement with Kingston Saskatchewan's predecessor Enbridge Pipeline (Saskatchewan) Inc. to deliver crude oil to and from the Secure Alida Terminal (**Former Interconnection Agreement**). Secure took assignment of this agreement when it assumed ownership of the Secure Alida Terminal.

The Former Interconnection Agreement had an initial term of five years, commencing 1 August 2013 and ending 1 August 2018. The Agreement was later amended to provide that following the initial five-year term, either party could terminate the Former Interconnection Agreement on 60 days written notice. Secure was a party to the amendment.

Secure and TEML Saskatchewan held conversations and exchanged correspondence regarding the potential renewal of the Former Interconnection Agreement. However, Secure and TEML Saskatchewan were unable to agree on commercial terms. On 27 March 2019, TEML Saskatchewan provided 60 days' notice to Secure that it was terminating the Former Connection Agreement, effective 26 May 2019.

Secure could continue to nominate trucked-in crude volumes to the Kingston Saskatchewan Pipeline, but was effectively prohibited from delivering blended oil from the Secure Alida Terminal. For a while, Secure continued to operate at the Secure Alida Terminal by not passing the Saskatchewan System toll through to its customers. However, Secure eventually had to pass through the Saskatchewan System toll to its customers, which resulted in Secure's customers ceasing their deliveries to the Secure Alida Terminal, and Secure having to lay off staff and shut down the Secure Alida Terminal.

2.3 Procedural summary

The Commission held a public, written hearing to consider the Application. In brief, Secure, Kingston, current shippers and other interested persons were served with the Application. The extensive process that followed, detailed below, included opportunities to file comments with the Commission about process and substantive matters. There was also an opportunity to file evidence, ask questions about initial comments or evidence and file notices of motion, including requests for further and better answers to the responses to questions. All parties also had an opportunity to file final argument, and Kingston and Secure had an opportunity to file reply argument.

On 6 January 2020, the Commission sought comments on the Application, including comments on further process that the Commission may establish. The letter was sent to Secure and Kingston, with Kingston directed to serve the letter on all Westspur shippers and interested persons. The letter stated that after reviewing the comments, the Commission may issue its ruling or set out further process to deal with the Application.

A number of comments were received, including from Kingston, current Westspur shippers, and potential shippers, as well as reply comments from Secure.

On 19 March 2020, the Commission indicated that additional information was required and sent information requests to both Secure and Kingston. Responses were filed by the 7 April 2020.

In one of its information requests, the Commission requested a copy of the Settlement Agreement between Kingston and certain shippers. This agreement had been referenced by Kingston in previous comments about the Application. Kingston responded that the Settlement Agreement was confidential and that it was consulting with counterparties to the Settlement Agreement to determine what portions of the Settlement Agreement were relevant to this proceeding and could be disclosed to the Commission on a confidential basis.

On 16 April 2020, Secure filed a notice of motion requesting, amongst other things, that the Commission order Kingston to disclose the full Settlement Agreement in accordance with the previous Commission information request.

A comment process ensued and in response, on 23 April 2020, Kingston filed a notice of motion seeking confidential treatment of portions of the Settlement Agreement which Kingston deemed relevant to the Application. The portion of the Settlement Agreement that was filed confidentially with the CER contained significant redactions. Kingston also responded to certain past Commission information requests about the Settlement Agreement. Confidentiality was also requested by Kingston for these responses.

On 11 June 2020, after considering comments from the parties, the Commission issued Ruling No. 1. This ruling addressed the test for confidentiality and directed Kingston to file the full unredacted Settlement Agreement in order for the Commission to determine relevance. Included in the Commission's direction, Kingston was given an opportunity to specify where its previous comments about confidentiality applied and where redactions were necessary. While the Commission did not rule on the confidentiality of the Settlement Agreement at this time, the Commission declined to grant confidentiality to Kingston with respect to certain Kingston responses to the information requests. Lastly, the ruling discussed a previous NEB precedent concluding that terms and conditions of service for an NEB-regulated pipeline must be contained in a publicly available tariff.

As directed by the Commission, Kingston filed the entire Settlement Agreement for the Commission's review. On 21 August 2020, in Ruling No. 2, the Commission provided direction regarding the relevance and significance of the entire Settlement Agreement. Kingston was directed to file portions of the Settlement Agreement that had been previously redacted. The Commission agreed with Kingston that detailed descriptions of previous legal settlements and provincially regulated pipelines were not relevant to the Application before the Commission. Kingston was granted confidentiality with respect to relevant portions of the Settlement Agreement except in limited instances where the same information was already on the public record. The Commission also found that it would be a breach of natural justice for Secure to not have access to confidential portions of the Settlement Agreement filed on the hearing record. Secure and Kingston subsequently agreed on appropriate confidentiality undertakings.

On 1 September 2020, the Commission set out the remaining process steps in respect of the Secure Application. This included an opportunity for Kingston and Secure to file written evidence and an opportunity for all parties to ask information requests. There was also an opportunity to file motions to compel full and adequate responses to information requests.

On 4 September 2020, Kingston filed a letter in response to the remaining hearing steps set out by the Commission. Kingston said it did not interpret the Commission's 1 September 2020 procedural letter as having established a process that could grant the relief requested in Secure's Application. Additional fairness concerns were raised by Kingston. After considering comments and reviewing the duty of fairness, the Commission issued Ruling No. 3, dated 21 October 2020 in which it confirmed the following:

- The Commission was of the view that its original ruling conveyed that the Application was not dismissed without further process, as Kingston had initially requested. Reasons were provided, including that Secure had raised potentially valid concerns regarding common carrier provisions.

- The issues in the proceeding were established by the relief sought by Secure in paragraph 1 of the Application, appropriately and clearly defined the scope of the proceeding. On the matter of jurisdiction, the Commission agreed with Kingston that “there is no basis at this time for examining potential jurisdictional issues.” The Commission noted that this was consistent with direction in Ruling No. 2.
- A formal Hearing Order was not needed to confirm process steps. Sufficient information about the hearing process had been provided to the parties.
- A Notice of Public Hearing was more broadly distributed. All current shippers on the Westspur Pipeline that wished to participate were automatically made intervenors.
- In addition to the ability to file comments in response to the Application, the Commission was persuaded by comments filed that an additional opportunity for all parties to file evidence was warranted.
- It was unnecessary for Secure to file additional evidence in support of its Application.
- Although Kingston challenged the order in which parties issued information requests, the Commission said it was not persuaded there was a good reason to change the previous process of having all parties file information requests at the same time after all evidence had been filed. The Commission said this balanced the requirements of procedural fairness with the need to advance the proceeding in an expeditious manner.⁴
- In considering the fairness of the hearing as a whole, the Commission indicated that there is no requirement for each hearing to have identical process and there are a number of ways hearing fairness can be achieved in the particular circumstances of an application. The Commission concluded that the process as a whole, which was amended to allow additional evidence to be prepared and filed, continued to be fair to all parties.

Ruling No. 4, dated 30 October 2020, confirmed hearing participation. All those who registered to participate were sufficiently impacted by the Application and were able to fully participate as intervenors. A list of parties was attached to the ruling.

On 11 November 2020, the Commission, in Ruling No. 5, granted a request for confidentiality from Kingston, related to a former interconnection agreement and historical data that Kingston intended to refer to in its evidence.

In Ruling No. 6, dated 18 December 2020, the Commission addressed issues raised by Cardinal Energy Ltd. (**Cardinal**) about access to the confidential Settlement Agreement. Cardinal raised concerns with certain aspects of Ruling No. 6. In its Review and Variance ruling, dated 10 March 2021, the Commission dismissed Cardinal’s request.

In Ruling No. 7, dated 2 March 2021, the Commission granted confidentiality of a response by Kingston to a Commission information request. The Commission also required Kingston to provide the response where confidentiality was granted to Secure for natural justice reasons.

On 5 March 2021, the Commission issue Procedural Update No. 1, setting out details of the process for final argument. The process included both written and oral options with 13-14 April 2021 reserved for oral summary argument.

⁴ The process for information requests followed in the Trans Mountain Reconsideration hearing was referenced.

In Ruling No. 8, dated 12 March 2021, the Commission issued a ruling regarding notices of motion from both Kingston and Secure claiming inadequate responses to information requests. The Commission dismissed some of the requests and granted others, with reasons provided. Both parties then filed further responses.

The Commission issued Procedural Update No. 2, dated 22 March 2021, revising the process for final argument to be written only. This was in response to Kingston's request for a written only hearing due to counsel for Kingston not being available between 7 April and 7 May 2021 and potential unavailability in mid-May. Secure indicated it preferred both a written and oral final argument, but its main interest was in completing the hearing on a timely basis. The Commission decided to maintain the schedule for written argument from Procedural Update No. 1, and added a reply opportunity for Kingston and a final reply for Secure as the applicant.

Parties filed argument according to the dates set out in Appendix I – Updated Timetable of Events (22 March 2021).

The full details of the hearing process, and all notices of motions and requests, as well as the Commission's rulings and directions, are included on the hearing record.⁵

2.4 Procedural Matter – Whether Market Power is in Scope

In its written final argument, dated 6 April 2021, Kingston submitted that it reasonably proceeded on the basis that market power was beyond the scope of the hearing. It argued that market power is beyond the scope of the hearing and should not be considered as part of the Commission's decision. Kingston submitted that it would have filed expert evidence on this topic if given the direction and opportunity to do so.

Submissions made by Kingston in favour of its position included the following:

- While Kingston proposed that there be a List of Issues for the hearing, Secure argued that the issues were defined by the specific orders sought by Secure in paragraph 1 of its Application. Ultimately, the Commission accepted Secure's position and the Commission did not specifically address the issues that Kingston submitted were issues "raised in and arising from the Application".
- Paragraph 1 of the Application makes no reference to market power. However, Secure continues to make submissions about market power.
- While both Secure and the Commission asked Kingston information requests that included questions about market power, Kingston reiterated its view that market power was beyond the scope of the hearing. With respect to information requests asked of it, Kingston reiterated its view that market power was out of scope.

⁵ A list of the Commission's rulings during this hearing can be found in Appendix I.

Submissions made by Secure opposing Kingston's position about market power included:

- Market power is clearly within the Commission's jurisdiction and there is previous NEB precedent that the Commission must intervene when there is a perceived or actual abuse of market power.⁶
- Kingston's unilateral decision not to engage on the topic of market power or to submit evidence on this topic was its choice.
- Secure has presented evidence and argument on market power from the date its Application was filed.
- The Commission asked information requests of Kingston about market power.

No other party raised direct concerns about this issue.

2.4.1 Views of the Commission

The issue raised by Kingston is one of procedural fairness. At its core, the issue is whether Kingston was told of the case to be met and had an opportunity to respond. Having considered all the points raised by Kingston, the Commission is not persuaded that consideration of market power would be procedurally unfair. Market power concerns were raised throughout Secure's Application and there was no suggestion in the proposed relief set out by Secure in paragraph 1 of its Application that considerations about market power were outside the scope of the relief sought. It was up to each party to file evidence as it wished in response to Secure's detailed Application. In this instance, concerns raised about market power were clear and obvious. The Commission must always consider allegations of an abuse of market power and consider intervening when such concerns are raised.⁷ This is discussed further below in **Section 3.4**.

In the Application, at least five paragraphs raised concerns about Kingston and its affiliates with respect to market power, monopoly power or restrictions on competition.⁸ There were additional references in the Application to allegations of Kingston gaining a business advantage, discrimination, and a lack of open access consistent with Kingston's tariff.⁹ At no time were any of these claims withdrawn by Secure.¹⁰ In fact, Kingston agreed in its Final Argument that Secure continued to make submissions about market power throughout the process. Given the details contained in Secure's Application, there is no question that Kingston had knowledge of the case to be met. How Kingston responded to that case was in its control. Kingston had sufficient opportunities to respond to or challenge Secure's evidence if it wished to do so. This included an opportunity to comment on the Application, file evidence, ask and respond to information requests, and file final and reply argument.

⁶ NEB, *TransCanada PipeLines Limited – North Bay Junction, RH-3-2004 Reasons for Decision*, Filing ID [A08726-1](#) (16 December 2004).

⁷ *Ibid* at 8.

⁸ Secure Application for Transmission Order (s.239), Filing ID [C03902](#), (30 December 2019) at paras 38, 39, 47, 52 and 53.

⁹ *Ibid* at paras 37 and 50.

¹⁰ Broadbill also raised allegations of an abuse of market power by Kingston early in the Application process, see *Broadbill Letter of Comment*, Filing ID [C04076](#) (13 January 2020).

With respect to concerns raised by Kingston about how Ruling No. 3 addressed the issues in the hearing, the Commission is not persuaded by Kingston's argument. As stated in Ruling No. 3:

"The Application specifically established the issues with sufficient clarity such that interested parties should understand what is to be determined and participate fully in the proceeding accordingly".¹¹

As described above, the Application explicitly raised market power in multiple places. Paragraph 1 of the Application is specific to the relief being requested and appropriately defines the hearing scope, as the Commission stated. In this case, the request for relief concerning common carriage and an extension of facilities allows for consideration of a broad range of factors. It is always up to each party to submit evidence and to make submissions in response to the requested relief. The fact that the relief requested was not sought specific to market power alone does not mean that market power is outside the scope of the hearing, particularly given the historical consideration of market power as a factor. The factors considered in a particular hearing will depend on the specifics of an individual complaint or application.¹²

The Commission placed low weight on points raised by Kingston about information requests, other than observing that both Secure and Commission did ask questions that, in part, related to market power. However, these information requests were asked later in the process. What is more important is that concerns about market power were clearly raised in the Application, as they were.

While the Commission is not persuaded by Kingston's submissions regarding procedural fairness, the Commission's analysis of, and conclusions about market power were not determinative of the Application. None of the relief sought was contingent on findings about market power. Even without Secure's evidence about abuse of market power, the record was sufficient to allow the Commission to make determinations and grant relief related to common carriage and extension of facilities.

While the issue of market power was not determinative with respect to Secure's relief, the Commission nevertheless has provided its views and direction about market power. The Commission has the jurisdiction and obligation to intervene and provide direction if there is a perceived or actual abuse of market power. This is discussed further in **Section 3.4** and Chapter 7.

¹¹ CER Ruling No. 3 to Kingston Midstream Westspur and Secure Energy, Filing ID [C09040-1](#), (21 October 2020) at 7 also concluded that "...parties knew the case to be met from the details set out in the Application".

¹² In NEB, *Murphy Oil Company Ltd. – Complaint and Application Regarding Westcoast Energy Inc.*, RHW-1-2011, Letter Decision, Filing ID [A30877](#), (23 August 2011), the NEB considered and made a finding about the exercise of market power. That was in the context of a claim of unjust discrimination where common carriage obligations were also part of the relief sought. In some past common carriage determinations, such as NEB, *PanCanadian Petroleum Limited*, [MH-4-96](#), *Reasons for Decision* (February 1997) [MH-4-96], there was not a specific discussion of market power. This illustrates that factors raised with respect to common carriage and/or unjust discrimination will depend on the specifics of the application filed and the arguments raised. In this case, the claim of an abuse of market power was raised from the outset.

3 Service on the Westspur Pipeline under subsection 239(1) of the CER Act

3.1 Legal Framework

Secure's Application is centered on the Commission's authority under section 239 regarding common carriage and the extension of facilities. The relevant parts of section 239 stipulate:

239 (1) Subject to any regulations that the Commission may prescribe and any exemptions or conditions it may impose, a company operating a pipeline for the transmission of oil must, according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline.

[...]

(3) If the Commission considers it necessary or in the public interest and it finds that no undue burden will be placed on the company, it may require a company operating a pipeline for the transmission of oil, gas or any other commodity to provide adequate and suitable facilities for

- (a)** receiving, transmitting, and delivering the oil, gas or other commodity offered for transmission by means of its pipeline;
- (b)** storing the oil, gas or other commodity; and
- (c)** joining its pipeline with other facilities for the transmission of oil, gas or any other commodity.

Subsection 239(1) of the CER Act imposes a duty on a company operating an oil pipeline to receive, transport and deliver all oil offered for transmission by means of its pipeline, subject to exemptions, conditions or regulations imposed by the Commission.

Subsection 239 is very similar to its predecessor section 71 of the NEB Act. The Commission finds that the NEB's past decisions on common carriage still apply. The following NEB decisions provide relevant analysis of subsection 239(1).

MH-1-2009 clarifies that this subsection does not specifically refer to common carriage, but it is generally accepted that subsection 71(1) of the NEB Act (now subsection 239(1) of the CER Act) reflects the common law duties of a common carrier pipeline.¹³

A key principle confirmed by the NEB in its MH-4-96 decision, is that compliance with the common carrier provisions is determined by a test of reasonableness, which is a relative concept.¹⁴ This permits the Commission to tailor the statutory obligations of an oil pipeline to fit any unique circumstances that may exist.¹⁵ A compelling precedent comes from the statement

¹³ NEB, *Kinder Morgan Canada Company – Windsor Sarnia Pipeline, MH-1-2009 Reasons for Decision*, Filing ID [A24956](#), (April 2010) at 7; [MH-1-2009]. See also [MH-4-96](#), *supra* note 12 at 11 and NEB, *Trans-Northern Pipelines Inc. - Proposed Suspension of Service on the Don Valley Lateral -MH-3-2000 Reasons for Decision* (November 2000) at 6-7 [MH-3-2000].

¹⁴ [MH-4-96](#), *supra* note 12 at 11; affirmed in [MH-1-2009](#), *supra* note 13 at 7.

¹⁵ *Ibid.*

from RH-4-84, that an oil pipeline carrier is under a *prima facie* duty to ship all oil tendered to it, including petroleum product, unless it can convince the Commission that for some reason, such as a safety or capacity related one, it cannot.¹⁶

Under subsection 239(3) of the CER Act, the Commission may require an oil pipeline carrier to provide adequate and suitable facilities to receive, transmit and deliver oil “if the Commission considers it necessary or in the public interest” and finds that no undue burden will be placed on the company.

In MH-3-2000, the NEB found that subsections 71(1) and (3) of the NEB Act (now subsections 239(1) and (3) of the CER Act) have different purposes and different criteria:

Subsection 71(1) provides the statutory obligation of an existing oil pipeline to provide service on its pipeline. Subsection 71(3) on the other hand furnishes the [NEB] with the extraordinary power to order a company to provide new facilities. The additional requirement of determining whether there would be an undue burden on the company prevents the [NEB] from using the public interest as its sole criterion in applying subsection 71(3).¹⁷

Parliament made revisions to the wording of subsection 239(3) in the CER Act, as compared to the previous NEB Act subsection 71(3), which stated: “The [NEB] may, if it considers it necessary or desirable to do so in the public interest ...” require an extension of facilities.

While it could be argued using an ordinary meaning approach to statutory interpretation that relief could be directed based solely on an extension of facilities being “necessary”, when section 239 is read in its entire context, it is evident that requiring an extension of facilities remains an extraordinary form of relief. Such an order could not be based on need alone and it is proper, as the parties have done in argument, to take into consideration the public interest.¹⁸ Public interest may include a broad range of factors, including need.

3.2 Applicability of subsection 239(1) of the CER Act

Kingston raised the issue of whether subsection 239(1) of the CER Act applies to Secure’s request for delivery and receipt service from the Westspur Pipeline to the Secure Alida Terminal. For the reasons below, the Commission finds that subsection 239(1) does apply to this Application.

¹⁶ NEB, Gulf Canada Limited - RH-4-84 Reasons for Decision (December 1984) at 3 [RH-4-84]; affirmed in [MH-4-96](#), supra note 12 at 11-12 and [MH-1-2009](#), supra note 13 at 7.

¹⁷ [MH-3-2000](#), supra note 13 at 8.

¹⁸ Part of the changes made in subsection 239(3) of the CER Act reflect a modernization of language.

3.2.1 Submissions

Views of Secure included the following:

- Subsection 239(1) of the CER Act does apply.
- Kingston's "order of operations" interpretation is unreasonably simplistic, does not reflect the operational reality of pipelines regulated by the CER Act and is not supported by the relevant provisions of the CER Act.
- Kingston's "more focused interpretation" of subsection 239(1) and authorities put forward by Secure runs directly counter to the NEB/CER's consistent reliance on the broad principles of open access, support for enhancing competition, and clear indications that published tariffs determine access and service on common carrier pipelines.

Views of Kingston included the following:

- Subsection 239(1) of the CER Act does not apply to the relief requested by Secure. Kingston reviewed and distinguished each of the decisions relied upon in the Priddle Report¹⁹ and by Secure.
- Secure is seeking relief that would require Kingston to transport, deliver, receive, transport, and re-deliver crude oil, which does not respect the order of operations set out in subsection 239(1) (i.e., receive, transport, and deliver).
- Subsection 239(1) is intended to ensure producers can ship their crude oil from production basins to downstream markets. There is no precedent for applying the common carriage provisions of the CER Act (or the predecessor provisions of the NEB Act) to facilitate a midstream activity such as that proposed by Secure.

3.2.2 Views of the Commission

The Commission finds that subsection 239(1) of the CER Act has clear application in these circumstances. The interpretation of subsection 239(1) of the CER Act must be based on the modern approach to statutory interpretation, which requires the words in the statute to be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament"²⁰. Both Kingston and Secure referred to this modern approach but differed in its application and arrived at opposing conclusions.

The Commission is of the view that Secure's position and arguments are consistent with the *Interpretation Act*: "Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."²¹ The purpose of the CER Act is to regulate certain energy matters within Parliament's jurisdiction and, in particular, to ensure that pipelines are constructed, operated and abandoned in a manner that

¹⁹ An independent expert report prepared by Mr. Roland Priddle.

²⁰ *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 SCR 27 at para 21; *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 at para 194.

²¹ RSC, 1985, c I-21, s 12.

is safe, secure and efficient and that protects people, property and the environment; and to regulate trade in energy products.²²

The Commission's broad authority is also supported by the scheme of the CER Act. Section 32 sets out the Commission's full and exclusive jurisdiction under the CER Act. The Commission is also authorized to make general orders and prohibitions (section 34), orders with respect to all matters relating to traffic, tolls, or tariffs (section 226), determinations regarding just and reasonable tolls and unjust discrimination (section 231), and require the extension of facilities (subsection 239(3)). Kingston focused on the extra-provincial scope of the legislation and argued that subsection 239(1) should not be interpreted in a way that would facilitate a provincially regulated blending operation. The Westspur Pipeline is regulated by the CER and all transactions on the pipeline are subject to the same legislative requirements. Midstream butane blending facilities do not always fall under the CER's jurisdiction but to the extent that such a facility requests to receive, transport, and deliver oil via a federally regulated pipeline, that related regulation falls under the CER's jurisdiction.

Secure and Kingston raise numerous cases in their submissions, some which overlap. The Commission is not persuaded by Kingston's narrow interpretation of the past cases. In particular, Kingston's interpretation of MH-1-2009, RH-4-84, RH-3-90, and MH-4-96 focuses on access to downstream markets (distinguishable from midstream operations, such as those at issue in this case) as a key reason for the NEB granting common carrier relief or approving new facilities. Contrary to Kingston's argument that the requested relief would not connect upstream production to downstream markets, the Commission finds that while oil in a pipeline can only move downstream, midstream facilities may constitute a market for oil whether they add or extract butane or perform any other legal function.

The Commission finds that Secure's view of what constitutes a "market" to be more realistic than Kingston's narrow view of downstream markets. In particular, the Commission agrees with Secure's submission that "the Westspur Pipeline is one component of an integrated system with various connections that may include terminals, refineries and other facilities where crude oil comes off and returns to a pipeline; in many cases such facilities represent a "market" for a producer's crude."²³ This is consistent with the definition in the CER Act that "pipeline" means a line including "all branches, extensions, tanks, reservoirs, storage or loading facilities, pumps, racks, compressors, interstation communication systems, real or personal property, or immovable or movable, and any connected works..."²⁴ The Commission acknowledges Secure's submission that the Westspur Pipeline currently provides for delivery of crude oil to and from the MIW Facility. Further, the Westspur Pipeline itself does not end at a final "downstream market" as defined by Kingston; it connects to the Enbridge Mainline at Cromer, which then transports the oil further east.²⁵

The Commission finds that there are cases supporting a realistic view of "markets" as being more than a market at the end of a pipeline. The Commission is persuaded by Secure's characterization of the Secure Alida Terminal as being analogous to the natural gas liquid (NGL) extraction plants featured in MH-2-97: they are both midstream facilities that receive

²² CER Act, SC 2019, c 28, s 10 at ss. 6(a) & (c).

²³ Secure Reply Argument Filing, ID [C12360-2](#) (13 April 2021) at para 23.

²⁴ CER Act, s. 2.

²⁵ *Supra* note 23 at paras 12 & 41.

product from a pipeline, add or remove NGLs from the product, then put a product back onto the pipeline.²⁶

In MH-2-97, the commodity at issue was NGLs and in this case, the commodity to be acquired by Secure is blending headspace. The NEB did not regulate the Solex NGL extraction plant, but recognized that those who ship their gas on Westcoast system through the McMahon plant should be entitled to make business decisions regarding whether Solex or Novagas Canada Ltd. (**NCL**) strips the NGL from their gas.²⁷ The NEB directed Westcoast Energy Inc. (**Westcoast**) to enter into consultations with shippers to determine what tariff amendments should be included to enable shippers to obtain the rights to the liquids entrained in their gas and to permit shippers, should the NCL plant be built, to direct Westcoast to divert their gas to the NCL facility.²⁸

Likewise, in *Decision D96-07*, the Alberta Energy and Utilities Board (**EUB**) considered an application that would enable Gulf Canada Resources Limited to reprocess sidestream gas to recover certain NGLs and return the residue gas to the NGTL system. The EUB granted the application and confirmed that producers should be entitled to reprocess their share of the common stream.²⁹ This case further supports an interpretation of subsection 239(1) that would provide producers with alternative options for resource optimization.

The Commission is of the view that although the facts of past cases may not be exactly the same as the present circumstances, the general principles are still relevant. The Federal Energy Regulatory Commission case regarding *Colonial Pipeline* supports the notion that blending is a non-jurisdictional service.³⁰ In *Twin City Transfer Co v Canadian Pacific Railway Co*, the Canada Board of Railway Commissioners found that the railway company must furnish adequate and suitable accommodation for a passenger's arrival at and departure from the station and emphasized the passenger's right to choose his conveyance.³¹ Other general principles from the NEB's past decisions on common carriage were already discussed in **Section 3.1** above. In particular, MH-1-2009 discusses how compliance with common carrier provisions is determined by a test of reasonableness³². RH-4-84 sets out the principle that an oil pipeline carrier is under a *prima facie* duty to ship all oil tendered to it, including petroleum products, unless it can convince the Commission that for some reason, it cannot.³³

The Commission observes that none of the past NEB cases put forward by the parties concluded that subsection 71(1) of the NEB Act, predecessor to subsection 239(1) of the CER Act, did not apply at all. It is telling that the NEB did not focus on section 71's applicability, but rather the reasonableness of requiring common carriage.

²⁶ *Ibid* at paras 37 & 39.

²⁷ NEB, Novagas Canada Ltd. - [MH-2-97](#) Reasons for Decision (October 1997) at 5 (PDF 12).

²⁸ *Ibid* at 5-6.

²⁹ Alberta Energy and Utilities Board, *Decision D96-07* (26 September 1996) at 7. This point was also affirmed in Alberta Energy and Utilities Board, *Decision 2004-006* (27 January 2004) at 8.

³⁰ United States of America Federal Energy Regulatory Commission, *Colonial Pipeline Co.*, [162 FERC ¶ 61,158](#) (23 February 2018) at paras 54-55. The Commission recognizes this is a single case from another jurisdiction under a different statutory scheme. As a result, this authority was given only moderate weight.

³¹ (1913), 11 DLR 744 at para 20; *Grand Trunk Pacific Railway v Purcell* (1911), 21 WLR 638 was a similar case where a bus driver was granted access to the railway station despite the railway's exclusive contract with a rival transfer company.

³² [MH-4-96](#), supra note 12 at 11; affirmed in [MH-1-2009](#), supra note 13 at 7.

³³ RH-4-84, supra note 16 at 3; affirmed in [MH-4-96](#), supra note 12 at 11-12 and [MH-1-2009](#), supra note 13 at 7.

Kingston argues that this is not a common carriage case and suggests that the Commission can deny the Application on this issue alone.³⁴ However, the Commission is of the view that Kingston's proposed narrow interpretation of subsection 239(1) without reference to public interest and undue burden in other subsections would lead to consequences that illustrate the unreasonableness of Kingston's proposed interpretation and highlight the regulatory inefficiency and unpredictability associated with Kingston's interpretative approach. Specifically, the consequences of denying the Application based on Kingston's proposed interpretation include: Secure would be denied service that complies with the Westspur Pipeline Tariff; producers and shippers would be denied the choice of an alternate market for the blending headspace in their oil; and Secure's Alida Terminal would likely be abandoned after only six years of operation. The Commission is of the view that such a consequence would be undesirable and not consistent with the purpose of the CER Act or its common carriage provisions.

Kingston emphasizes the grammatical and ordinary reading of subsection 239(1) to conclude that the order of operations set out in subsection 239(1) is critical (i.e., receive, transport, and deliver) and that crude oil must be offered for transportation as a precondition.³⁵ However, the Commission is of the view that the grammatical and ordinary meaning must be considered with the scheme and object of the CER Act. The Commission agrees with Secure's position that nowhere in the legislation does it explicitly say, or even impliedly suggest, that the broad common carrier duty imposed by section 239 only applies where oil is offered and handled in the specific order of "receive, transport and deliver".³⁶

The Commission is not persuaded by Kingston's argument that Secure is seeking relief that would require Kingston to "transport, deliver, receive, transport, and re-deliver". The CER Act requires an oil pipeline to "receive, transport, and deliver" oil offered for transmission by means of its pipeline. It would create operational issues if a pipeline were required to receive and transport oil but not deliver it, or to transport and deliver oil without having received it. This is not what Secure is requesting. The relief Secure seeks would enable two distinct operations. Oil could be received at a receipt point on the Westspur Pipeline, transported, and delivered to Secure's requested delivery point at the Secure Alida Terminal. Oil could also be received from Secure's requested receipt point at the Secure Alida Terminal, transported on Westspur, and delivered with the final delivery likely being at the end of the Westspur Pipeline where it interconnects with the Enbridge Mainline.

Based on the modern approach to statutory interpretation, reading the words of the statute in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, the Commission concludes that subsection 239(1) of the CER Act does apply in these circumstances.

3.3 Directing the provision of service to Secure

Having concluded that subsection 239(1) of the CER Act applies to this Application, the Commission now assesses the substance of the requested relief.

For the reasons below, the Commission directs Kingston to provide delivery and receipt service to and from the Secure Alida Terminal pursuant to subsection 239(1) of the CER Act. Kingston

³⁴ Kingston *Argument*, Filing ID [C12273-2](#) (6 April 2021) at para 4.

³⁵ *Ibid* at para 30.

³⁶ *Supra* note 23 at para 20.

is under a *prima facie* duty to ship all oil tendered to it unless it can convince the Commission that for some reason it cannot.³⁷

3.3.1 Submissions

Views of Secure included the following:

- There is capacity on the Westspur Pipeline and Kingston has not provided any reasonable basis for its refusal to provide the access requested by Secure.
- Secure does not currently have any feasible alternatives to the Westspur Pipeline for transportation of oil from its Alida Terminal. Indeed, if it did, it would not have been forced to shut down the Secure Alida Terminal and wind up its commercial arrangements when its access to the Westspur Pipeline was removed.
- The primary, if not the only, reason that Kingston denied Secure's requested service is to protect a commercial advantage that its affiliate, Kingston Marketing, enjoys at the MIW Facility as a result of the Settlement Agreement.
- Kingston provides its affiliate, Kingston Marketing, with the same service at the MIW Delivery and Receipt points on the Westspur Pipeline that Kingston is denying Secure. As concluded by Mr. Priddle in his report, Kingston's refusal to provide this service to Secure, while offering it to others, constitutes unjust discrimination.
- Producers, shippers, and carriers are entitled to enter into private agreements; however, such agreements cannot constrain the jurisdiction of the CER in respect of a CER-regulated pipeline. More importantly, a CER-regulated pipeline is subject to statutory duties and obligations under the CER Act, and a party cannot contract out of those duties.³⁸ As Mr. Priddle concludes, refusal of service to protect a commercial advantage is not behaviour that is permitted to common carriers like Kingston. Kingston is also attempting to impose the burdens of the Settlement Agreement on Secure and other shippers who did not agree to them, and without allocating to them any of the accompanying benefits. Secure did not agree to this arrangement, nor would it have as it completely undermines the operation of the Secure Alida Terminal.
- Secure does not anticipate that there will be any impacts associated with its proposed blending activities on other shippers on the Westspur Pipeline. Provided Secure's volumes enter the Westspur Pipeline within pipeline specification and are equalized pursuant to the crude equalization methodology in Kingston's CER Tariff 94, Secure does not expect that its blending activities would have a detrimental impact on any other shipper.
- Secure will only be able to take up "blending headspace"³⁹ in crude oil in accordance with the express rights granted to Secure by a shipper/producer in the relevant commercial agreement.

³⁷ *RH-4-84*, *supra* note 16 at 3.

³⁸ Secure stated that "In [*MH-4-96*], the [NEB] stated in no uncertain terms that the "primary function" of an oil pipeline is to provide open access transportation, and that such a function must be fulfilled regardless of commitments made in commercial agreements. Applying this to the present case, Kingston cannot rely on the terms of an undisclosed Settlement Agreement as the basis for resisting the fulfillment of its "function" as a common carrier."

³⁹ Kingston *Response to Commission IR No. 1*, Filing ID No. [C05651-2](#) (7 April 2020) at 14.

- In order to address concerns raised with respect to the impacts of blending heavy oil on the common stream on the Westspur Pipeline, Secure would agree not to accept trucked in heavy oil at the Secure Alida Terminal, or use heavy oil in its blending operations, if its Application is approved.

Views of Kingston included the following:

- Kingston does not wish to offer, nor is it required to offer, blending options or services on the Westspur Pipeline, particularly when they are not being requested by, or supported by, producers.
- Secure was not directly connected to a Westspur Pipeline receipt point and the Secure Alida Terminal has never been a receipt point on the Westspur Pipeline.
- TEMPL Saskatchewan (now Kingston Saskatchewan) is a party to the Settlement Agreement and terminated the Former Interconnection Agreement as it was incompatible with the recently executed Settlement Agreement.
- Secure is effectively advocating for a competitive model for blending that Kingston did not necessarily object to, but which model became a major issue in the Complaint Proceeding and to which producers who intervened in that proceeding were strongly opposed.
- Kingston provided an expert report from Waguespack that estimates that the resumption of blending activity at the Secure Alida Terminal would result in a total reduction in revenue of approximately 20 per cent for Kingston Marketing and members of the Producer Group. This 20 per cent reduction in revenue represents a transfer in value from the Settlement Agreement parties to Secure.
- Because Secure cannot demonstrate commercial support from a majority of producers for its proposed blending, it would not be unjustly discriminatory to deny Secure's proposed blending operations. Indeed, if Secure's proposed blending operations were allowed, it would have an unfair advantage relative to all other shippers on the Westspur Pipeline.
- Kingston has consistently asserted that granting the requested relief could result in the termination of the Settlement Agreement.
- The best way to resolve concerns over equitable allocation of blending rights was to ensure orderly and efficient blending activity would only be carried out near the downstream terminus of the Westspur Pipeline on the terms and conditions agreed to by the parties. To that end, to settle the Complaint Proceeding Kingston agreed not to connect the blending facilities of Kingston Marketing at the North Steelman Terminal. Granting Secure's requested relief would unfairly give Secure the ability to blend butane at points upstream of MIW when Kingston Marketing is prohibited from doing the same.
- The decision to disallow interconnections to the Secure Alida Terminal is consistent with the decision to negotiate commercial arrangements directly with the producers entitling them to certain economic benefits in exchange for such right to blend producers' volumes.
- It is not unjustly discriminatory to deny Secure delivery and receipt access to the Westspur Pipeline at the Secure Alida Terminal. There are several important

considerations which justify the blending at MIW while denying Secure the receipt and delivery access sought pursuant to the Application.

- The nature of the blending activity Secure would be carrying out at the Secure Alida Terminal is fundamentally different from the blending activity at MIW. Secure's Application makes it clear that Secure intends to blend heavy oil at the Secure Alida Terminal.
- Because Secure's heavy oil blending activity will degrade the quality of the commingled stream on the Westspur Pipeline and blending at MIW will not have the same effect, it is not unjustly discriminatory to deny Secure receipt and delivery access that would facilitate such blending activity.
- The purpose of the Finelt Report is to provide evidence to address the impact to crude oil producers of blending a heavy crude oil into a common crude oil stream of materially different quality (e.g., significantly lower density and sulfur content, as well as large differences in other important quality parameters).
- Secure's Application could result in some oil production unfairly benefiting by being blended more than once (i.e. "double dipping").
- It would also not be possible to physically segregate the barrels to ensure that Secure only uses the blending headroom associated with the oil production nominated to the Secure Alida Terminal.

Views of other participants included the following:

- Canadian Natural Resources (**Canadian Natural**) is a party to the Settlement Agreement and is concerned that any ruling by the CER in this matter could alter the terms of such Agreement, which could then have an adverse impact on the substantive rights of Canadian Natural and unfairly impact the provisions of the Agreement reached between the Westspur shippers and the carrier.
- Vermilion Energy Inc. (**Vermilion**) does have some concerns that a ruling by the CER impacting blending services on the Westspur Pipeline System may materially alter the terms of the Settlement Agreement to the detriment of Vermilion.

3.3.2 Views of the Commission

The Commission is of the view that Secure's Application is straightforward, well supported by the evidence, and consistent with the CER Act. There are many factors supporting the Commission's conclusion that it is reasonable for Kingston to provide Secure's requested service on the Westspur Pipeline. In particular, a number of key facts favouring Secure's application are not in dispute by the parties:

- The Westspur Pipeline is a common carrier pipeline regulated by the CER.
- The Westspur Pipeline currently has capacity.
- Secure's requested service is not specifically restricted by the Westspur Tariff.⁴⁰

⁴⁰ *Ibid* at 22.

- The Secure Alida Terminal is an existing facility that had prior access to the Westspur Pipeline for approximately six years via two provincially regulated pipelines connected to the Kingston Alida Terminal.

A key principle that applies to Kingston is that a company operating an oil pipeline is under a *prima facie* duty to ship all oil tendered to it unless it can convince the Commission that for some reason it cannot.⁴¹

Kingston presented evidence and arguments in support of its position that the denial of service to Secure is reasonable, not unjustly discriminatory and in the public interest. The Commission finds the submissions and arguments made to be, collectively and individually, unpersuasive and lacking in convincing evidence to give rise to reasons to restrict access to a common carrier pipeline. The Priddle Report stated that there was no reasoned excuse given by Kingston for denying Secure’s requested access to the common carrier Westspur Pipeline and the Commission is in general agreement with the supporting analysis. RH-4-84 provided safety and capacity as possible reasons for not providing common carriage service⁴², but these were not raised by Kingston.⁴³

Need and market interest

Kingston argued that there was no “clear market interest” or “demonstrated need” for Secure’s requested relief. The Commission acknowledges that in MH-1-2009, the NEB considered whether there was a clear market interest in making an order under subsection 71(1) of the NEB Act (now subsection 239(1) of the CER Act) based on the supply, market, and transportation infrastructure evidence filed by parties.⁴⁴ Consistent with the approach taken in MH-1-2009, the Commission finds that Secure’s willingness to commit to a facilities support agreement and pay reasonable costs associated with the interconnection facilities sufficiently demonstrates a market interest in the service and associated facilities.⁴⁵

With respect to “demonstrated need”, the Commission notes that MHW-1-2010, which Kingston relies on, clearly lists the issue of demonstrated need as a consideration under the equivalent of subsection 239(3) and not subsection 239(1).⁴⁶ The Commission points out that necessity is explicit in the test for extension of facilities under subsection 239(3), but there is no similar onus in subsection 239(1) requiring Secure to demonstrate need for the requested service. In any event, the Commission finds the closure of the Secure Alida Terminal to be a compelling argument that Secure does need the requested service. **Section 4.3** contains a more detailed discussion of need in the context of subsection 239(3).

Settlement Agreement

Kingston argued that substantial benefits flow from the Settlement Agreement and that the requested relief could result in the termination of this agreement. Kingston provided detailed submissions on producer group netbacks, the resolution of the Crescent Point Complaint

⁴¹ RH-4-84, *supra* note 16 at 9.

⁴² *Ibid* at 3.

⁴³ In final argument, Kingston raised safety concerns to support the need for Total Vapour Pressure analyzers in the context of relevant facilities and this is discussed in more detail in **Section 4.2**.

⁴⁴ [MH-1-2009](#), *supra* note 13 at 13.

⁴⁵ *Ibid* at 23.

⁴⁶ NEB, *Cenovus Energy Inc. Application Regarding the Express Pipelines Ltd Husky Lateral MHW-1-2010 Letter Decision*, Filing ID [A1Z3X6](#) (26 May 2011) [MHW-1-2010] at 3.

Proceeding and related court actions, toll certainty, affiliate code of conduct, and orderly blending for the benefit of producers.

The Commission considered the diverging views amongst the parties on the relevance and weight to be given to the Settlement Agreement. Canadian Natural and Vermilion are parties to the Settlement Agreement and expressed concern that a ruling by the CER in this matter could alter the terms of the agreement to their detriment. Interestingly, Crescent Point is also a party to the Settlement Agreement but did not align with Kingston's heavy reliance on the Settlement Agreement. Crescent Point argued that the rights and obligations which producers have reached under the Settlement Agreement are not relevant considerations in this proceeding and there is little, if any, reason for the Commission to consider the Settlement Agreement. Likewise, Secure, who is not a party to the Settlement Agreement, argued that the Settlement Agreement is a private commercial agreement of limited relevance to the issues before the Commission in this proceeding and should be given little weight in the Commission's determination of those issues.

The Commission finds that information concerning the Settlement Agreement is relevant to its understanding of the context for this Application. However, a commercial arrangement among parties does not constrain the Commission's consideration and decision⁴⁷. The NEB did not approve or endorse the Settlement Agreement,⁴⁸ and neither has the Commission. Furthermore, the Commission is of the view that a commercial agreement cannot supersede statutory obligations. The Commission finds the following excerpt from MH-4-96 to be instructive in this situation:

The [NEB] is mindful of the enterprise which has been demonstrated and investments made by Amoco to secure access for NGL under its control to the IPL system. The [NEB] recognizes that the measures it has decided upon in response to PanCanadian's application and the further necessary steps to provide public access to IPL for NGL may affect the value of certain of those investments. However, in this instance, **the provision of open public access to oil pipelines under the [NEB]'s jurisdiction is a consideration of overriding importance.**⁴⁹ [Emphasis added]

The Commission confirms that in this Application, the provision of open access to oil pipelines under the CER's jurisdiction is a consideration of overriding importance. The Commission does not find the alleged public interest benefits flowing from the Settlement Agreement or the potential termination of the agreement to be convincing reasons for denying service to Secure under subsection 239(1). In **Section 4.3**, the Commission addresses the public interest considerations associated with the Settlement Agreement in more detail in the context of subsection 239(3).

Impact on quality of the crude stream

Kingston argued that blending at the Secure Alida Terminal could introduce heavy oil onto the Westspur Pipeline. Kingston filed evidence to show that heavy oil blending could increase the Total Acid Number, carbon and metals content of the crude, translating to a lower value crude. In response, Secure committed that it would not blend heavy oil at the Secure Alida Terminal.

⁴⁷ [MH-1-2009](#), at 36 "The [NEB] finds that information concerning the UA and JVA to be relevant to its understanding of the context for this application. However, commercial arrangements among parties do not constrain the [NEB]'s consideration and decision."

⁴⁸ NEB, *Withdrawal of Complaint RHW-002-2017*, Filing ID [A97877-1](#) (8 February 2019) at 1.

⁴⁹ [MH-4-96](#), supra note 12 at 13-14.

The Commission finds that Kingston has not established a sufficient concern about quality of crude stream, if any. The crude oil offered by Secure, in light of its commitment to not blend heavy oil, is not likely to impact the quality of the commingled stream in a manner that would not be addressed by the Westspur Tariff. Secure has adequately confirmed that its deliveries of crude oil to the Westspur Pipeline from the Secure Alida Terminal will comply with the crude specification in the Westspur Tariff.⁵⁰ The Commission considered Kingston's Finelt Report and the impacts to crude quality and value that were noted, but finds the report is of limited applicability and should be given little weight as it was premised on the blending of heavy crude oil into a common crude oil stream of materially different quality. Further, there was no compelling evidence of adverse impacts on the quality of the common stream when Secure formerly provided blending services at its Alida Terminal for six years, which included heavy oil blending.

The Commission finds that it would not be appropriate to apply different criteria to Secure with respect to the blending of heavy oil to justify the denial of service. Kingston conceded that it does not know if any shippers conduct heavy oil blending upstream of the Westspur Pipeline and has no way to estimate the amount of heavy oil currently blended into the common stream. If Kingston wishes to introduce any requirements or restrictions pertaining to the blending of heavy oil on Westspur Pipeline, they should be incorporated into the Westspur Tariff so they can be fairly applied to all shippers.

Unjust Discrimination

Section 235 of the CER Act prohibits "unjust discrimination in tolls, service or facilities against any person or locality". Together with subsection 239(1), this section requires that an oil pipeline offer service under the same terms and conditions to any party wishing to ship oil on its line.⁵¹ If it is shown that Kingston discriminated, the burden lies on Kingston to prove that the discrimination was not unjust.⁵²

The Commission is of the view that the receipt and delivery points requested by Secure are similar to the receipt and delivery points that were provided to Kingston Marketing for the MIW facility. The issue is not about allowing or disallowing blending; both Kingston and Secure agree that Secure's blending operation is outside of the Commission's jurisdiction. Rather, Secure is requesting a delivery connection and receipt connection, similar to the MIW delivery and receipt points. The Commission finds that Kingston discriminated against Secure by denying Secure's requested service.

The Commission is not persuaded by Kingston's argument that there is no unjust discrimination because it is operating the Westspur Pipeline in a manner that mitigates the risk of double dipping to ensure that all producer shippers are treated fairly. Kingston describes double dipping as the same volume of oil being available for blending twice. The Commission agrees with Kingston that the delivery of blended volumes into the commingled stream may have the impact of decreasing the amount of blending room available in any given barrel of the commingled stream to other shippers downstream. However, Kingston also conceded that the Westspur Tariff does not expressly restrict crude petroleum that has been subjected to blending activities from being delivered to the Westspur Pipeline.⁵³ Also, any receipt and delivery services Secure

⁵⁰ Secure Argument, Filing ID [C12148-2](#) at para 72.

⁵¹ [MH-1-2009](#), supra note 13 at 8.

⁵² CER Act, s. 236.

⁵³ *Supra* note 39 at 22.

provides would be based on shipper choice. In the Commission's view, blending room is an aspect of the quality of the crude oil to be addressed by the Westspur Tariff. The Westspur Tariff includes quality equalization procedures, which will apply equally to Secure as they do to volumes delivered elsewhere on the Westspur Pipeline, including the MIW. Kingston's evidence is that the quality equalization in the tariff fairly compensates shippers for the impacts from butane blending⁵⁴. Further, there is no compelling evidence that Secure would be able to utilize materially more blending room than was nominated to it. The Commission also discusses double dipping in **Section 4.2** in the context of relevant facilities to provide adequate and suitable connections.

Kingston also argued that Kingston Marketing's commercial arrangements (i.e., the Settlement Agreement and lease and in-stream purchases from shippers) put it in fundamentally different circumstances from Secure. The Commission is of the view that these private commercial arrangements do not justify discrimination. The Commission agrees with the Priddle Report on this point:

"it is not appropriate for a regulated common carrier pipeline to look into the business intentions of a party seeking the extension of that pipeline's facilities, decide that they are not consistent with an undisclosed private arrangement between the pipeline and other parties that confers "rights" of some kind, and rely on that as a basis to deny the requested service."

The Commission also finds that the Secure Alida Terminal is in a different position from the Kingston Marketing North Steelman Terminal. Kingston Marketing freely entered in the Settlement Agreement, which resulted in Kingston Marketing agreeing not to conduct blending activities at the North Steelman Terminal. This is distinct from Secure's circumstances - Secure is not a party to the Settlement Agreement. Secure requested access only to be denied by Kingston.

Therefore, the Commission concludes that Kingston has failed to demonstrate that there was no unjust discrimination associated with its refusal to provide Secure with service.

In conclusion, the Commission directs Kingston to provide receipt and delivery service to and from the Secure Alida Terminal pursuant to subsection 239(1) of the CER Act. The Commission finds that it is reasonable for Kingston to provide Secure's requested service on the Westspur Pipeline. This is in keeping with Kingston's common carriage obligation and the public interest in ensuring open access to the Westspur Pipeline. Secure's requested service complies with the Westspur Tariff and Secure should have access to transportation. The Commission was not persuaded by the reasons advanced by Kingston to justify its refusal of service, including but not limited to, need and market interest, the Settlement Agreement, and impacts to the quality of the common stream.

3.4 Market Power

The Commission then considered Secure's allegations regarding Kingston's abuse of market power. An abuse of market power was defined by the NEB in RH-3-2004 to include

⁵⁴ Canadian Natural, Ridgeback Resources Inc. (**Ridgeback**), and Vermillion disagreed; however, the concerns were general to all blending of butane. No compelling evidence was filed in support of finding that any potential unfairness in the quality equalization procedure results in unjust discrimination or tolls that are not just and reasonable.

discriminatory pricing, inappropriate barriers to the efficient functioning of markets, and the favourable treatment of affiliates⁵⁵.

3.4.1 Submissions

Views of Secure included the following:

- Given its virtual monopoly on crude oil pipeline transportation in the region, by denying Secure access to the Westspur Pipeline, Kingston is able to obtain an unfair business advantage and is able to realize the economic upside on blending activities, while denying such upside to Secure and its customers. The result of Kingston's conduct has been to render the Secure Alida Terminal uneconomic such that it has been shut down. Kingston ought not to be able to abuse its market power in this way, particularly as it is contrary to the stated open access principle and is not in the public interest.
- There is evidence of a coordinated and deliberate strategy on the part of the Kingston entities to use their combined powers to control access to their pipelines, thereby controlling entry to the blending market, in order to benefit Kingston Marketing and its parent company.

Views of Kingston included the following:

- Kingston reasonably proceeded on the basis that market power was beyond the scope of this proceeding. If given the direction and opportunity to do so, Kingston would have marshalled expert evidence on the subject of market power as it is a complex field of economics.

Views of other participants included the following:

- Broadbill said it is very concerned with Kingston Midstream's recent abuse of market power in eliminating their competition by unfairly changing the terms of its tariffs, increasing the tolls of their competitors, reducing the ability for the local production to access the CER-regulated Westspur Pipeline, and the recent changes in operations away from industry standards in order to target producers and midstream companies in breach of their Code of Conduct.

3.4.2 Views of the Commission

The Commission finds that the issue of market power is not determinative of the Application⁵⁶, but it does provide further support for the Commission's decision to grant Secure's requested service under subsection 239(1). As explained in **Section 2.4**, the Commission finds that market power was within the scope of the Application and that its consideration was not procedurally unfair.

In addition to addressing the specific relief requested by Secure, as a regulator, the Commission must ensure that there is appropriate regulatory oversight of the Westspur Pipeline. This

⁵⁵ *Supra* note 6 at 8.

⁵⁶ For clarity, none of the Commission's determinations on paragraph 1 of the relief requested in Secure's Application are dependent on any findings regarding the market power issue raised by Secure.

includes preventing the abuse of market power. In RH-3-2004, the NEB determined that the “[NEB] must intervene to prevent the abuse of market power... Market power must not be abused, in terms of both substance, which would need to be proven, and, in terms of appearance and perception.”⁵⁷ An apprehension that some market players are abusing their power may lead to inefficient outcomes, and needs to be addressed.⁵⁸

The Commission is of the view that particularly in the case of a Group 2 company regulated on a complaint-basis, as Kingston has been to date, the Commission should inquire and respond in a fulsome manner when a shipper or other interested party tenders evidence that gives rise to a reasonable perception of the abuse of market power. The Commission must address this perception of market power to ensure the presumption – which exists in the context of Group 2 companies absent a complaint - that tolls are just and reasonable remains valid. Therefore, this issue is addressed in Chapter 7 of this decision.

Secure provided persuasive evidence that there is, at minimum, a perceived abuse of market power on the part of Kingston. The Commission accepts that Secure does not currently have any feasible alternatives to the Westspur Pipeline for transportation of oil from its Alida Terminal. There is evidence that denying service to Secure financially benefitted Kingston’s affiliates. The Waguespack Report estimates that the resumption of blending activity at the Secure Alida Terminal would result in a total reduction in revenue of approximately 20 per cent for Kingston Marketing and members of the Producer Group. Kingston confirmed that financial impacts to Kingston Marketing associated with Secure's resumed blending operations would result in corresponding financial impacts to Kingston Marketing's parent company, Kingston Midstream, which also owns Kingston, Kingston Weyburn and Kingston Saskatchewan.

The Commission notes that Secure is not alone in its concerns, as Broadbill also alleged an abuse of market power by Kingston Midstream. The Commission is also concerned that TEML Saskatchewan, now Kingston Saskatchewan, terminated the Former Interconnection Agreement because it was incompatible with the Settlement Agreement. Crescent Point, one of the parties to the Settlement Agreement, indicated that its execution of the agreement was not done to limit or restrict new shippers or producers from transporting volumes of crude on the Westspur Pipeline System. Furthermore, Secure argued that there are individuals with common leadership positions at all of the Kingston entities, and that those individuals have been involved in decisions for different Kingston entities that directly implicate Secure’s operations. Despite the Affiliates Code of Conduct, and the fact that Kingston Marketing, Kingston Weyburn, and Kingston Saskatchewan do not have any ownership interest in Kingston, the Commission finds that the perception of market abuse remains. Kingston appears to have restricted access to the Westspur Pipeline and provided favourable treatment of an affiliate that resulted in inefficient outcomes, including the lack of crude optimization alternatives for shippers that are not parties to the Settlement Agreement and closure of the relatively new Secure Alida Terminal.

Directing Kingston to provide delivery and receipt service to the Secure Alida Terminal addresses the perceived abuse of market power in the circumstances of this Application. To address the ongoing perception of abuse of market power and mitigate the risk that Kingston continues to fail to fulfill its common carrier obligation, the potential for broader regulatory oversight measures are discussed in Chapter 7.

⁵⁷ *Supra* note 6 at 8.

⁵⁸ CER, Letter to Suncor Energy Inc., Shell Canada Limited, The Explorers and Producers Association of Canada, and Canadian Natural Resources Limited – Complaints regarding Enbridge Pipelines Inc. Mainline Open Season (Enbridge Open Season Complaint), Filing ID [C01893-1](#) (27 September 2019) at 2.

4 Adequate and suitable facilities under subsection 239(3)

For the reasons set out below, should negotiations concerning the use of provincial facilities continue to be unfruitful, Kingston is directed to provide new facilities for the transmission of oil between the Secure Alida Terminal and the Westspur Pipeline. This direction is subject to the expedited filing of an application by Kingston, in consultation with Secure, under section 214 of the CER Act.

The Commission's authority under subsection 239(3) of the CER Act to require a company to provide adequate and suitable facilities is considered an extraordinary power. Before issuing such an order, the Commission must consider if there would be an undue burden on the company. The onus is on Secure to meet the test under subsection 239(3). Despite differences in the legal test and purposes under this subsection compared to common carriage requirements, there is a link between subsections 239(1) and (3). From a practical standpoint, in some cases it may be necessary or in the public interest to order new facilities to support compliance with common carriage requirements. There will also be some overlap in factors considered between subsections 239(1) and (3) of the CER Act, although the criteria in subsection 239(3) will not be applied in the same manner to the common carrier obligations under subsection 239(1).⁵⁹

4.1 Existing facilities

Existing facilities connect the Secure Alida Terminal to the CER regulated Kingston Alida Terminal.⁶⁰ However, these facilities are owned by a Kingston affiliate and are provincially regulated. Kingston insists that the existing facilities are not available to facilitate Secure's access to the Westspur Pipeline. All attempts by Secure to negotiate access have been unsuccessful. This requires the Commission to consider whether to require Kingston to construct new facilities in order to allow Secure access to the Westspur Pipeline for common carrier receipt and delivery services.

4.1.1 Submissions

Views of Secure included the following:

- There are existing facilities that for six years provided the service that, for all intents and purposes, Secure is now requesting from Kingston. Those facilities can be used without any major changes or modifications required on the part of Kingston. Secure's understanding is that only the Reversal Line Lease Automatic Custody Transfer (**LACT**) meter has been removed.
- The only aspects of the existing interconnection facilities that Kingston has identified as forming part of the provincially regulated Saskatchewan Gathering System are the Reversal Line and the Delivery Line.

⁵⁹ [MH-3-2000](#), supra note 13 at 8; Subsection 239(3) is similar although not identical to the previous NEB Act provision.

⁶⁰ The Kingston Alida Terminal is located on the mainline (Westspur Pipeline) and can be used to receive crude oil from Line 23A or Line 23B of the mainline. It is also a terminalling facility where Saskatchewan producers can send crude through directly connected gathering pipelines or truck-in facilities.

- If for some reason, the Commission determined that the existing pipelines could not be used to provide Secure's requested service, Secure believes that the balance of the existing facilities, most of which are located on the Secure Alida Terminal site, could nonetheless be used.
- Secure has not sought relief from the Saskatchewan Ministry of Energy. It said that ministry does not have a process for declaring a common carrier and the Oil and Gas Conservation Board has been dissolved.
- In Final Argument, Secure proposed some potential options for the Commission to direct the use of the existing pipelines to accommodate Secure's access to the Westspur Pipeline:
 - i) directing Kingston to apply to the CER for an interconnection using the existing pipelines and facilities, including any modifications that may be required to ensure compliance with the CER's technical requirements.
 - ii) directing Kingston to agree with Kingston Saskatchewan on terms for use of the existing pipelines to accommodate Secure's service; or
 - iii) subsuming the existing pipelines into federal jurisdiction.

Views of Kingston included the following:

- The pipelines that connect the Secure Alida Terminal to the Kingston Alida Terminal are licensed, owned, and operated by Kingston Saskatchewan.
- The existing Saskatchewan Pipeline owned and regulated facilities connecting the Secure Alida Terminal to the Kingston Alida Terminal were facilities constructed solely to serve the previous owner of the Secure Alida Terminal. Given this was the only purpose of these interconnecting facilities, they are redundant and Kingston Saskatchewan intends to abandon them to avoid any ongoing maintenance costs or future liabilities.
- The existing Saskatchewan Pipeline facilities are inadequate for providing service on the Westspur Pipeline that aligns with the Settlement Agreement.
- Kingston stated that it could not negotiate with its affiliate for use of the existing facilities.
- Kingston and its affiliates that are parties to the Settlement Agreement are not prepared to do anything to jeopardize that agreement and, in particular, are not prepared to negotiate disposition of this segment of pipeline in order to provide Secure the ability to take crude oil off of the Westspur Pipeline.
- It is an abuse of process for Secure to attempt to have the Commission have Kingston or its affiliates re-attempt the failed negotiations between Kingston Saskatchewan and Secure, and to have Kingston negotiate indirectly for Kingston Saskatchewan.

4.1.2 Views of the Commission

The Commission is of the view that the existing facilities, known as the Delivery Line and the Reversal Line, are currently under provincial jurisdiction.⁶¹ Secure proposed three options in final argument for the Commission to direct the use of the existing facilities: (1) directing Kingston to apply for interconnection using existing facilities; (2) directing Kingston to reach an agreement to use existing facilities; or (3) subsuming the existing facilities into the CER's jurisdiction.

If Secure, or any other party, is of the view that provincially regulated facilities should be subsumed by the CER, they may file an appropriately detailed jurisdictional application.⁶² The existing facilities are not under the CER's jurisdiction. However, this determination about these particular facilities in no way relieves Kingston of its broader duty in subsection 239(1) of the CER Act to "according to its powers, without delay and with due care and diligence, receive, transport and deliver all oil offered for transmission by means of its pipeline."

While the Commission is not persuaded in this case that it has the authority to issue the direction Secure requests regarding pipelines which are currently provincially regulated, the Commission encourages all parties to find a way to utilize existing facilities, regardless of jurisdiction. It is in the public interest to use existing facilities as much as possible, particularly in this case where the existing facilities are relatively new. How the facilities may be utilized would be up to the parties or their affiliates. Kingston stated that it, and its affiliate Kingston Saskatchewan, would not negotiate to facilitate Secure's access to the Westspur Pipeline because it would jeopardize the Settlement Agreement. Given the Commission's findings above regarding the breach of common carriage requirements, it may be possible that such a position could be reconsidered. Other solutions, such as the purchase of these facilities by Secure or the transfer of these facilities to Kingston from its affiliate, may be viable options. The Commission leaves these matters to the parties to consider. However, blocking access to a common carrier pipeline to protect a commercial agreement with a limited group of shippers, impedes common carriage and creates a perception of the abuse of market power by Kingston.

The Commission is of the view that, in the absence of an agreement to purchase, transfer, or use the existing facilities, the construction of new connection facilities is appropriate and grants the relief sought by Secure. While building new facilities was not always Secure's preferred solution in the course of this hearing, it was relief that Secure applied for. Kingston appears to agree that new facilities could be directed to be constructed. In fact, Kingston argues that building new federally regulated facilities connecting the Secure Alida Terminal to the Westspur Pipeline is the only solution possible.⁶³ While the Commission is mindful that requiring an extension of pipeline facilities is extraordinary, based on the facts of this case, it is a solution that must be allowed.

⁶¹ Kingston filed evidence that the pipelines that connect the Secure Alida terminal to the Kingston Alida Terminal are licenced, owned and operated by Kingston Saskatchewan. Pipeline licences were issued by the Saskatchewan Ministry of the Economy (now the Ministry of Energy and Resources), see Kingston *comment letter in response to the Application*, Filing ID [C04188](#) (20 January 2020).

⁶² This is consistent with [Commission Ruling No. 3](#), *supra* note 11 at 6; see also Commission Ruling No. 2, Filing ID [C08014](#) (21 August 2020).

⁶³ *Supra* note 34 at para 215.

4.2 Facilities required to provide adequate and suitable connections

In considering whether an extension of facilities should be ordered it is necessary to consider the type of facilities that would be required. Given the submissions in this proceeding, the Commission must also consider whether batching and segregation of Secure's product is required.

4.2.1 Submissions

Views of Secure included the following:

- Secure will be tendering crude oil that is consistent with the type and quality of crude currently transported on the Westspur Pipeline. There is no basis to impose additional operational and facilities requirements on Secure that are not required for other shippers that deliver oil to the Westspur Pipeline.
- Secure is prepared to conduct its operations without blending heavy oil. This entirely negates the need for specific operational practices and facilities to address impacts from heavy oil blending.
- While a shipper may expect to be delivered the same "type" of crude oil that it tenders to the Westspur Pipeline, a shipper is not entitled to be delivered the exact same molecules of crude oil that it tenders. This is a practical operational reality on all oil pipelines where commingling in a common stream occurs.
- The Westspur Rules and Regulations require a shipper to provide a certificate of crude quality on request by Kingston, and also permit Kingston to, at any time, take a sample of crude tendered to the Westspur Pipeline. These measures provide further assurances that oil tendered to the Westspur Pipeline from the Secure Alida Terminal meets the Westspur Pipeline crude specification.
- The existing interconnection facilities include a LACT unit that allows for measurement and sampling of the quality of the crude oil transferred from the Kingston Alida Terminal to the Secure Alida Terminal, and from the Secure Alida Terminal to the Kingston Alida Terminal.
- "Off spec oil" is directed back to the Secure Alida Terminal facilities (to the recovery tank) from the Delivery Line LACT and therefore would not enter the Westspur Pipeline.
- The cost of new pipelines and related facilities for the requested service, if necessary, would be approximately \$1 to \$2 million. The length would be approximately 350 m.
- In Secure's view, with the exception of the "Batch Accumulation Tankage" and the "Offtake Tankage" which are unnecessary from a design perspective and pursuant to the Westspur Rules and Regulations, the existing facilities generally meet the design requirements outlined in the Shapko Report.⁶⁴
- The costs associated with construction of new pipelines make up a very small portion of the overall estimate in the Shapko Report, consistent with Secure's views on costs for new pipelines.

⁶⁴ This report is discussed below.

- The potential for double blending at unregulated facilities and Kingston's apparent private contractual obligations to avoid double blending are not relevant to the operation of the CER-regulated Westspur Pipeline.
- Secure's blending will reduce the overall blending headspace in the common stream on the Westspur Pipeline, but only vis-à-vis the proportion of the common stream that has been nominated to the Secure Alida Terminal and for which Secure has consent to blend pursuant to commercial agreements
- Secure argued that the Producer Group members do not account for 100 per cent of the blending headspace in the common stream of the Westspur Pipeline. As a result, it is unclear how Kingston Marketing could have consent from producers to blend volumes that account for more than 100 per cent of the Westspur Pipeline common stream at the MIW Facility, especially when Cardinal's evidence and argument seem to suggest that Cardinal has been unable to negotiate an agreement for the blending of its crude at the MIW facility.

Views of Kingston included the following:

- Because there is no physical way to segregate crude volumes that would be nominated to the Secure Alida Terminal from those nominated to MIW by agreement with producers, Secure's blended volumes would be commingled with Westspur Pipeline's line fill. This in turn would result in Secure blending volume that has been previously nominated for blending at MIW.
- Should the Commission decide to grant the relief requested by Secure in the Application, the only way to do so in the interests of fairness is to require the blended volumes coming from the Secure Alida Terminal to be segregated into batches before being receipted onto the Westspur Pipeline.
- Batching addresses the double dipping concerns associated with a party to the Settlement Agreement nominating its crude to the MIW but also selling those volumes to a marketer or other producer aggregator who, in turn, nominates those same barrels to the Secure Alida Terminal.
- The equalization methodology addresses quality issues due to comingling. The intent of equalization is to ensure that a shipper gets credit for the crude oil it delivers to the commingled stream, and that it does not benefit from nor is it harmed by being part of the commingled stream. Where equalization cannot achieve this result, for example where there are different crude types, batching is required. Batching would ensure that blended volumes from the Secure Alida Terminal do not affect equalization on the Westspur Pipeline.
- There is no mechanism to prohibit heavy oil blending on the Westspur Pipeline other than segregation of the deliveries from Secure Alida for testing to ensure compliance with current and future crude oil specifications as defined in the Westspur Rules and Regulations. Batching volumes delivered from the Secure Alida Terminal would ensure that any heavy oil blended at the Secure Alida Terminal would not adversely affect the quality of the other crude being transported on the Westspur Pipeline.
- Kingston provided an expert report from Mr. Shapko which stated that "In order to avoid oil that Secure has already blended from having to be blended again downstream of Alida, from an engineering and operational perspective, the Secure blended volumes from the Secure Alida Terminal will need to be segregated from the rest of the Westspur

Pipeline volumes. In order to ship Secure blended volumes onto the Westspur Pipeline system, they will need to be batched into the Westspur Pipeline.”

- Mr. Shapko listed the facility modifications required to send and receive crude oil to Secure including: off-take storage; two pipelines; custody transfer facilities; and batch accumulation tank. Mr. Shapko estimated that these modifications would cost \$19.5 million.
- Kingston provided an expert report from Mr. Hinger which stated that “in the interest of providing equitable treatment of all Shippers on the pipeline system, and to mitigate potential downgrade to Westspur Pipeline common streams, it is necessary to segregate the Secure Blended Crude received onto the Westspur Pipeline.”
- Kingston raised a safety concern regarding the lack of on-line instrumentation at Secure’s facility to ensure that its blended crude does not exceed Westspur Pipeline vapour pressure specifications. Instead, the Secure Alida Terminal relies on an ASTM laboratory sampling and testing procedure which does not provide instantaneous vapour pressure measurements and does not address Kingston's safety concerns.
- Kingston argued that the importance of ensuring that Westspur Pipeline blending is conducted fairly in a manner that respects the rights of producers to their proportionate share of the blending headspace in the commingled stream justifies continuing blending at MIW while denying blending upstream at the Secure Alida Terminal.
- Kingston argued that because Kingston Marketing holds the rights to blend more than 100 per cent of the Westspur Pipeline common stream, through a combination of its rights under the Settlement Agreement and its lease and in-stream purchases, it is not possible for Kingston Marketing to blend crude volumes for which it lacks consent, nor is it possible for Kingston Marketing to engage in impermissible "double dipping" at MIW. Whereas, the volumes blended at the Secure Alida Terminal and returned to the Westspur Pipeline common stream are commingled with other volumes on the Westspur Pipeline common stream, incrementally reducing the blending headspace in the rest of the common stream, for which Secure has no blending rights.

Views of other participants included the following:

- Canadian Natural, Ridgeback, and Vermilion expressed concerns that heavy oil blending lowers the quality of the common stream on the Westspur Pipeline, which could result in lower pricing from refiners.
- Canadian Natural, Ridgeback, and Vermilion stated that quality equalization procedures in the tariff are not adequate to compensate shippers from impacts on crude subject to blending.
- Cardinal stated that production blended at both the Midale Battery, by Cardinal's predecessor, and the Secure Alida Terminal was previously shipped on the Westspur Pipeline, and there is no compelling evidence either that shipping blended production at that time, or that resuming such operations in future, would have an adverse impact on the operation of the Westspur Pipeline.
- Cardinal confirmed that it would meet blending facility and the Westspur Pipeline requirements, neither of which presently accommodate blended heavy crude.

4.2.2 Views of the Commission

The service Secure has requested and the quality of oil it proposes to deliver to the Westspur Pipeline are permitted by the Westspur Tariff. The Commission finds that batching facilities are not needed to provide service to Secure.

Unjust Discrimination

The Commission finds that Secure has demonstrated that Kingston's imposition of different operational and facilities requirements on Secure (i.e., segregation and batching) that are not published in the applicable tariff would be discriminatory. Secure's requested service was formerly accommodated on the Westspur Pipeline without the operational or facilities requirements Kingston now seeks to impose. Further, Secure is proposing to deliver crude to the Westspur Pipeline in accordance with the tariff, including the applicable crude specification.

The Commission notes that Kingston bears the burden to demonstrate that the requirements are not unjustly discriminatory and finds that Kingston has failed to demonstrate that the discriminatory treatment of Secure would not be unjust. The record clearly established that substantively similar operations at the MIW do not have such requirements placed upon them. Ordering Kingston to construct batch facilities, at Secure's cost would impose onerous operational and facilities requirements unique to Secure. Kingston's arguments that the MIW is differently situated from Secure's Alida Terminal were not convincing in the context of unjust discrimination.

In particular, the Commission is not convinced that the geographical location of existing facilities, which previously operated at the same time without issue, relative to the terminus of a pipeline justified the imposition of any restrictions or additional facilities requirements on Secure. Kingston emphasized that blending at MIW which is at the very end of the Westspur Pipeline was operationally efficient and environmentally responsible. The Commission notes that the Westspur Pipeline connects to the Enbridge Mainline and that Cromer does not represent the final destination for crude oil from the Westspur Pipeline. In this regard, the MIW may be upstream of other opportunities for optimization for shippers and purchasers of the crude oil transported on the Westspur Pipeline.

More generally, the Commission agrees with Secure that Kingston has not demonstrated why the concept of orderly blending is relevant to Secure's Application. Kingston has not established that the Commission should examine how blending is conducted at provincially regulated facilities connected to the Westspur Pipeline if the crude oil delivered to the Westspur Pipeline meets the specifications of the Westspur Tariff. However, the Commission agrees that it is important that shippers' rights are respected in how they are compensated through the equalization process for any potential impacts to the quality of the crude oil as a result of commingling, including blending headspace. The Commission is of the view that shippers are entitled to the quality attributes of their oil and to make business decisions regarding whether their oil is blended, and if so where. Recognizing these rights of shippers, the Commission agrees with Secure that it is unclear how Kingston Marketing could have consent from producers to blend volumes that account for more than 100 per cent of the Westspur Pipeline common stream at the MIW Facility.

The Commission was not persuaded by Kingston that Secure returning blended oil to the Westspur Pipeline common stream would incrementally reduce the blending headspace in the rest of the common stream, for which Secure has no blending rights. The Commission was persuaded by Secure's evidence that Secure would only be able to use blending headroom

proportionate to what was nominated to Secure's Alida Terminal⁶⁵ and that it would only blend oil for which it had negotiated terms with the shipper or oil which it had purchased. Any potential impact on the quality of the crude stream, including blending headspace, will be subject to the quality equalization procedure, as such impacts are currently addressed for volumes returned to the Westspur Pipeline from the MIW.

Kingston stated that it must be able to batch crude oil volumes from Secure to protect against the unfairness concerns it raised regarding double-dipping and adverse impacts on the quality of the crude stream, as well as to preserve the public interest benefits of the Settlement Agreement. The public interest benefits of the Settlement Agreement are discussed in **Section 4.3.2**, where the Commission gives them low weight. The Commission finds the public interest benefits of the Settlement Agreement are not a compelling reason to impose batching facilities. As discussed below, the Commission is not convinced that Kingston's concerns regarding double dipping or impacts on the quality of the crude stream warrant the imposition of batching facilities on Secure.

The Commission is of the view that requiring batching would be unjustly discriminatory. Accordingly, no batching requirements will be imposed for the transportation of Secure's crude oil volumes on the Westspur Pipeline.

Quality impacts on the crude stream

The issue of quality impacts on the crude stream is also discussed by the Commission in Chapter 3 and those findings are relevant here. Kingston stated that requiring it to segregate and batch the blended crude delivered to the Westspur Pipeline from the Secure Alida Terminal would mitigate the risk of adverse impacts on the crude stream.

Currently, product of the same crude type shipped on Westspur Pipeline is not batched or segregated. Terms of service and the quality of crude delivered to Westspur Pipeline are governed by the public tariff. Secure has stated that the crude oil it offers for transportation on the Westspur Pipeline will meet the quality specifications in the Westspur Tariff. Some shippers and Kingston raised concerns with potential impacts on the quality of crude oil in the Westspur Pipeline. Secure acknowledged shippers' concerns with respect to blending with heavy oil. Secure committed to not use heavy oil in its operations and Kingston can prevent heavy oil blending in its tariff and monitoring of tariff requirements. No party offered compelling evidence that crude oil that has been subjected to blending with butane and NGL adversely impacts the commingled crude stream. The Commission is of the view that providing service to Secure will not result in a material impact to the quality of the crude stream. With respect to heavy oil blending, Secure committed not to do this.

No party raised concerns with the quality of the commingled stream in such a manner that the Commission understood the concerns to constitute a complaint regarding the Westspur Tariff. A complaint may be filed with the CER if any party has concerns that any aspect of the Westspur Tariff results in unjust discrimination or tolls that are not just and reasonable. This includes concerns about the crude equalization procedures and the quality specifications.

⁶⁵ From Secure's [Reply Argument](#), supra note 23 at 18: "Secure's blending will reduce the overall blending headspace in the common stream on the Westspur Pipeline, but only vis-à-vis the proportion of the common stream that has been nominated to the Secure Alida Terminal and for which Secure has consent to blend pursuant to commercial agreements."

Double-dipping

The issue of double-dipping was briefly mentioned in Chapter 3 and further discussion is provided here. Kingston argued that Secure's connection to the Westspur Pipeline could result in unfairness because the same volume of oil would be available for blending twice. That is, a party would be able to obtain the benefits from blending the same volume of oil twice, at the Secure Alida Terminal and again at the MIW. Kingston described this as being analogous to the double-dip that concerned the parties in previous EUB decisions⁶⁶. Kingston argued that ordering Kingston to construct the batch facilities, at Secure's cost, and to transport Secure's blended crude in segregated batches would not be unjustly discriminatory because the batch facilities would be essential to mitigate "double-dipping" fairness concerns.

The Commission is not convinced that double-dipping is a significant concern at this time that requires mitigation. The Commission agrees with Secure that Kingston's most likely double dip scenario⁶⁷ is fully addressed in the Settlement Agreement. The Commission also agrees with Secure that Kingston's suggestion that marketers or aggregators may determine a way to double dip in a manner that is contrary to the terms of the private Settlement Agreement is both speculative and irrelevant in terms of transportation of crude oil on the Westspur Pipeline. The Commission notes that Kingston's concerns with double-dipping appear largely focussed on parties circumventing the Settlement Agreement. Further, regardless of the Settlement Agreement, since blending will only be conducted where it has been nominated to a blending facility with the consent of shippers,⁶⁸ Kingston should be aware of any volumes nominated from the Secure Alida Terminal to the MIW. If Kingston sees a need to address double-dipping in the Westspur tariff, it would have the power to do so through a tariff filing or application that would apply equally to all shippers and stakeholders. The Commission encourages Kingston to consult with all potentially impacted shippers before filing potentially controversial tariff amendments.

The Commission agrees with the NEB's views in its Reasons for Decision MH-2-97 and finds that shippers are entitled to the quality attributes entrained in their oil. In the present Application the Commission does not find that tariff amendments are required at this time to recognize this. The Commission finds that providing service to Secure under the published tariff, without additional batching and segregation facilities, would be consistent with these rights of shippers and with shippers being entitled to make business decisions regarding whether their oil is blended, and if so where. In making this finding, the Commission is cognizant that commingling of crude oil is the reality on the Westspur Pipeline and that the tariff includes a quality equalization process designed to adequately compensate shippers for changes in the quality of the crude oil. Neither Kingston nor intervenors provided compelling evidence that these rights of shippers would be impacted.

Kingston raised MH-2-97, as well as decisions of the EUB⁶⁹ and ERCB⁷⁰ in relation to the issue of double-dipping. There are significant areas where the circumstances that give rise to the

⁶⁶ *Supra* note 29.

⁶⁷ This double dipping scenario is described in para 145 of Kingston's argument, *supra* note 34.

⁶⁸ *Supra* note 34 at para 16; *Supra* note 23 at para 76.

⁶⁹ Alberta Energy and Utilities Board, Gulf Canada: Strachan Gas Plant Approval Amendment – NGTL Gas Sidestreaming Application Decision [D96-07](#) (26 September 1996); Alberta Energy and Utilities Board, Solex Gas Processing Corp., Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines Decision [2004-006](#) (27 January 2004); Alberta Energy and Utilities Board, Inquiry into Natural Gas Liquids (NGL) Extraction Matters Decision [2009-009](#) (4 February 2009).

⁷⁰ Alberta Energy Resources Conservation Board, *Re Taylor Processing Inc. – Applications for Three Pipeline Licences and a Facility Amendment Harmattan-Elkton Field*, Decision [2010-036](#) (7 December 2010).

concerns of double-dipping in the decisions cited differ from the circumstances of this Application. These differences include: Secure is not seeking to divert oil from the Westspur Pipeline, Secure is not expected to be able to use a materially disproportionate amount of the blending room in the crude stream, Secure is not applying to construct a new blending facility, and Secure is not in a position to double-dip.

Kingston's Expert Evidence

Kingston's expert evidence, while thorough, is premised on heavy oil blending by Secure. In the expert report of Don Shapko, P. Eng., the facility design was premised in part on heavy oil blending by Secure.⁷¹ Also, the need for batching was based on the risk of double-dipping⁷², the Settlement Agreement, and blended volumes and profit-sharing between Kingston and the Producer Group.⁷³ The expert report of Reynold Hinger P. Eng., also related to operational requirements, was premised in part on heavy oil blending by Secure.⁷⁴ After these reports were filed, Secure committed to not blend heavy oil. As such, low weight is given to the technical description of facilities that Kingston submitted were necessary. This is not a criticism of the expertise of the authors of these engineering reports, both of whom have extensive engineering experience.

Connection Facilities

The Commission has found that applying a batching and segregation requirement solely to Secure is unjustly discriminatory. The service Secure is requesting was formerly accommodated without the operational or facilities requirements Kingston is now seeking to impose. In the absence of batching and segregation facilities, relatively minimal facilities will be needed to provide service to Secure.

The Commission accepts that the cost of new pipeline and facilities is likely closer to the amount suggested by Secure.⁷⁵ However, the details of the specific facilities will be subject to a future application.

Regarding the safety concern raised by Kingston in final argument regarding the need for Total Vapour Pressure analyzers, the Commission finds that it was lacking reference to sufficient supporting evidence. In any event, the Commission is of the view that construction and operation of the connection facilities in compliance with applicable regulatory requirements would ensure the integrity of the Westspur Pipeline, and the safety of the public and the environment. More details on these connection facilities are provided in Condition 2 of Order MO-020-2021.

4.3 Need and Public Interest

Under subsection 239(3), the Commission must consider whether requiring Kingston to provide an extension of facilities is necessary or in the public interest. In this case, regardless of whether need is considered separately from public interest, the result would be the same.

⁷¹ Kingston's evidence, *Report of Mr. Don Shapko*, Filing ID [C09838-6](#) (24 November 2020) at para 4.0.

⁷² Kingston *Responses to Commission IR No. 3*, Filing ID [C11660-2](#) at 3.

⁷³ *Supra* note 71, at para 5.5.

⁷⁴ Kingston's evidence, *Report of Mr. Reynold Hinger*, Filing ID [C09838-7](#) (24 November 2020) at para 7.

⁷⁵ The significantly higher cost estimate provided by Kingston experts was based on the need for batching and segregation.

4.3.1 Submissions

Views of Secure included the following:

- Secure, and Petrolama before it, operated the Secure Alida Terminal profitably for several years prior to Secure's access to the Westspur Pipeline being cut off.
- Secure had commercial arrangements in place with several producers and shippers to blend crude oil received from the Westspur Pipeline, as well as crude oil trucked into the terminal. Despite having to pay the Saskatchewan System toll, due to Secure's blending and optimization activities, Secure was able to provide a competitive alternative to the Kingston Alida Terminal, often resulting in higher netbacks to producers.
- Secure does not have access to any feasible alternatives to the Westspur Pipeline and is effectively a captive shipper. If Secure's requested access is not granted, the Secure Alida Terminal will remain shut down. Unless an alternative use can be found for it, or the facility can be sold, the facility will likely be decommissioned after only six years in service. This is an entirely inefficient outcome.
- There is no evidence that the operation of the Westspur Pipeline was disorderly or uneconomic when the Secure Alida Terminal was previously connected to the Westspur Pipeline for six years, or would become so under the regulation of the CER if the Secure Alida Terminal were to be reconnected to the Westspur Pipeline and resume offering its custom crude oil and petroleum blending and optimization services.
- Secure has a longstanding business model of working with its customers for jointly beneficial outcomes, and as a recognized receipt and delivery point on the Westspur Pipeline, would only have the ability to receive volumes nominated to the Secure Alida Terminal by a shipper. Such nomination would only come following the negotiation of mutually agreeable commercial terms between such party and Secure.
- If Secure's Application is approved, the truck terminal services at the Secure Alida Terminal would provide alternative access to the Westspur Pipeline for trucked-in crude. This would improve overall access to the Westspur Pipeline and help alleviate congestion during busy times at the Kingston Alida Terminal.
- Secure is confident in its ability to attract additional volumes to the Secure Alida Terminal once it is put on a level playing field with Kingston Marketing.
- Additional options for crude optimization will enhance competition, ultimately benefiting shippers and producers. Mr. Priddle concludes that the NEB consistently found that it is in the public interest to allow competitive forces to work, and that granting Secure's requested relief is consistent with principles of market operation and shipper choice. The market should decide whether the Secure Alida Terminal offers a competitive option for blending services, not Kingston and not a small group of private parties.
- Despite Kingston's evidence that the Producer Group will suffer financial impacts if Secure's Application is approved, none of the Producer Group participants in the proceeding provided any evidence of their own to validate this concern.

Views of Kingston included the following:

- There is little or no demand for the service or facilities Secure is offering. Kingston is not aware of whether any additional volumes would be nominated to the Secure Alida Terminal if it were granted delivery and receipt connections on the Westspur Pipeline.
- The Commission must consider the impacts and benefits to southeast Saskatchewan producers. Harms to producers from granting the requested relief would be substantial. The Settlement Agreement ended a lengthy complaint process and allows for the orderly and economic operation of the Westspur Pipeline in the public interest. Granting Secure's requested relief would risk collapsing the Settlement Agreement, which is not in the public interest.
- When deciding whether the requested relief is reasonable and in the public interest, the Commission must consider whether there is a clear market interest or demonstrated need, and Secure has failed to demonstrate this.
- Granting the requested relief requires deploying significant capital, comes with incremental environmental impact and jeopardizes other public interest benefits. It is incumbent on Secure to present credible evidence that its blending operation is needed. Just because Secure had contracts for blending services in the past, does not mean that it will have any support if the requested relief is granted. No parties that had contracts with Secure in the past have participated in this proceeding to support the Application and circumstances have fundamentally changed since Secure operated its blending facility.
- Secure has been clear that the purpose of the Application is to allow Secure to resume its midstream blending operation for its own private benefit. The Commission can consider the private benefits that would accrue exclusively to Secure, but those private benefits cannot overwhelm the substantial public interest benefits to producers and Westspur Pipeline shippers that are at risk if the requested relief is granted.
- Granting the Application would not increase competition, nor would any supposed competitive benefits be sufficient to outweigh the substantial benefits that producers currently receive under the Settlement Agreement. Secure has not tendered evidence of any benefits to producers from granting the requested relief.
- Kingston Marketing and Secure are not competing for the same blending business. Increased competition can only result where the blending facilities in question compete for the blending business of the same parties.
- A careful review of the cases referenced in the Priddle Report shows that Secure's circumstances are fundamentally different from the facts before the NEB in those cases. Rather, those cases show that the NEB's focus was on ensuring that producers benefit from access to downstream markets and increased netbacks. That is exactly what the Commission's focus should be when evaluating Secure's Application.
- Kingston stated that granting the Secure's requested relief, by approving the Application, would set a precedent in this proceeding that effectively promotes unnecessary duplication of blending facilities. Such a precedent with the consequent environmental impacts, including incremental land use and greenhouse gas emissions impacts, is clearly not in the public interest.
- Cardinal and Broadbill do not claim they would be negatively impacted if the Application is denied.

Views of other participants included the following:

- Crescent Point submitted that decisions about options for competitive blending services fall outside the Commission's jurisdiction and should be left to the market and to the parties that have freely made commercial choices and decisions.
- Crescent Point argued all that the Settlement Agreement demonstrates is that producers and shippers have chosen a different competitive alternative to the services contemplated to be offered by Secure. Secure's intention of reviving its blending business is not a proper basis for the Commission to disturb existing commitments. Crescent Point submitted that given this, the rights and obligations which producers have reached under the Settlement Agreement are not relevant considerations in this proceeding. There is, therefore, little if any, reason for the Commission to consider the Settlement Agreement when addressing its mind to the issues giving rise to Secure's Complaint.
- Ridgeback submitted that as a producer, it does not support activities that devalue the quality of crude oil. Ridgeback stated that heavy oil blending lowers the quality of the crude oil on the Westspur Pipeline, potentially resulting in lower downstream pricing from refiners. Heavy oil blending operations do not provide value to the producers shipping on the Westspur and Saskatchewan Pipelines.
- Canadian Natural stated that while it is not supportive of blending⁷⁶, it is supportive of providing alternative truck receipt locations that the Secure facility would offer.
- Canadian Natural stated that it is a party to the Settlement Agreement and is concerned that any ruling by the CER in this matter could alter the terms of such Agreement, which could then have an adverse impact on the substantive rights of Canadian Natural and unfairly impact the provisions of the Agreement.
- Vermilion submitted that, as a producer, they do not support activities that devalue the quality of crude. Heavy oil blending operations does not provide value to the producers shipping on the Westspur and Saskatchewan Pipelines.
- Broadbill is in full support of Secure's Application to the CER, for delivery and receipt access at Secure's Alida Terminal to the Westspur Pipeline.
- Broadbill and its producer customers used the Secure Alida Terminal facility as a competitive alternative to Kingston Midstream's truck terminals, and as a result, improved the netback of the producers. It was forced to cease shipping to the Secure Alida Terminal when Kingston Midstream changed Secure's toll structure rendering the facility uncompetitive.
- Broadbill said the connection of Secure's Alida Terminal to the Westspur Pipeline will provide a competitive and necessary alternative to existing options, and confirmed its interest in re-commencing deliveries to the Alida Terminal if Secure is able to obtain access to the Westspur Pipeline via its application to the CER.
- Broadbill stated that the Secure Alida Terminal was an ideal location to send volume to when Kingston Midstream's truck terminals experience congestion which resulted in an increase in trucking costs due to wait times.

⁷⁶ Canadian Natural submitted that is not supportive of crude oil that has already been delivered to the Kingston Westspur Pipeline to then be taken off the system into a third party terminal, where it is then blended with other product and reinjected back into the pipeline through a receipt connection.

- Cardinal submits that the Secure Facility at Alida, if it were accessible from the Westspur Pipeline, would afford another blending option for Cardinal’s oil production currently transported on that pipeline, increasing the competitive marketplace for services to optimize production, which at this time are only available off of the Westspur Pipeline at the MIW Facility.
- Cardinal anticipates that increased competition is likely to result in increased netback. While increased netback is one consideration, other factors such as flexibility, risk mitigation, and availability of services on a competitive basis with other producers are likewise important factors which Cardinal anticipates will be afforded or enhanced by increased competition.
- Cardinal said that it has not entered into commercial arrangements with Secure in relation to blending or other operations at the Secure Alida Terminal.

4.3.2 Views of the Commission

The onus is on Secure to demonstrate that connections are necessary or in the public interest. The Commission finds that Secure has persuasively demonstrated that it needs receipt and delivery connections to the Westspur Pipeline for the operation of its Secure Alida Terminal and that overall, the requested connection facilities are in the public interest.⁷⁷ Open access and compliance with common carriage obligations are also in the public interest and are discussed in **Section 3.3.2**.

Need

In assessing whether Secure demonstrated need⁷⁸ for connections, the Commission considered whether there is an alternative to the construction of new facilities, whether there are viable alternative means of transportation for Secure, and whether the connections are required - in other words, likely to be used and useful. The Commission finds that:

- denying the connections would jeopardize Secure’s Alida Terminal;
- there are no viable alternatives to the Westspur Pipeline for Secure to operate the Secure Alida Terminal and blending operations and deliver blended volumes to markets; and
- the evidence on the record of this proceeding strongly supports that Secure requires connections between the Secure Alida Terminal and the Westspur Pipeline.

Secure shuttered its facility when it lost access to the Westspur Pipeline. This is compelling evidence of the lack of viable alternatives. Any costs imposed on Secure to truck in oil, or to otherwise access downstream markets would unduly jeopardize the viability of Secure’s facility and business operations.

⁷⁷ The Commission confirms that it is not, by this decision authorizing the connection facilities; any such facilities must obtain the appropriate regulatory authorizations. A future facilities application should provide additional detail about the new facilities, including consideration of environmental issues and mitigations, as well as consideration of any adverse impacts on the rights of Indigenous peoples, as required by section 56 of the CER Act.

⁷⁸ The NEB, in its Letter Decision [MHW-1-2010](#), supra note 46, considered whether there is a demonstrated need for the pipeline.

The Commission does not agree that it is incumbent on Secure to demonstrate that its blending operation is needed.⁷⁹ The Secure Alida Terminal exists outside of CER jurisdiction. The private commercial blending facility needs crude oil for its operations. This crude oil may be received by pipeline or by truck. The Commission has not determined whether blending operations are necessary, just as it has not considered the necessity of the services provided by any other interconnected facilities along the pipelines it regulates.

The Commission was not persuaded by Kingston that Secure is relying on hope that it will be able to reach agreement with shippers. The successful past operation of this facility, the willingness of Secure to pay for connections (discussed in Chapter 5), and the support expressed by Broadbill, Cardinal and Canadian Natural⁸⁰ are sufficient reasons to expect the facilities will be used and useful. Therefore, Secure has established that connections are needed.

Competition

Kingston argued that Secure and Kingston Marketing would not compete for the same blending business, and therefore there would not be an increase in competition. The Commission is of the view that Secure and Kingston Marketing would compete and that the record demonstrates a demand for providing additional shipper choice for crude oil optimization. Kingston's position that Kingston Marketing does not accept crude from non-producer shippers appears to be a commercial decision, one that could change in the future. Further, Kingston's evidence indicates that Kingston Marketing has offered blending agreements to other shippers or producers since entering into the Settlement Agreement. Kingston and Cardinal agree that Kingston Marketing was involved in discussions regarding the potential blending of Cardinal's oil at the MIW. The record is clear that a number of shippers who are not parties to the Settlement Agreement will have competitive options for crude optimization. In addition, Secure also provides an alternative truck receipt point which may be particularly beneficial during times of congestion.

An important element of competition and market-based solutions is the extent to which shippers can exercise the choice to have access to alternative means of getting their products to market.⁸¹ In **Section 4.2.2**, the Commission agreed with the views of the NEB in MH-2-97 in finding that providing service to Secure would be consistent with the rights of shippers to the quality attributes in their oil and to make business decisions regarding whether their oil is blended, and if so where. The Commission does not pick market winners and losers⁸² and it is not the Commission's role to protect market players from competition.

The Commission agrees with a number of points in the Priddle Report. Particularly, the NEB consistently found that it is in the public interest to allow competitive forces to work. The Commission also agrees that the market should make decisions between competitors, and this remains true even if some market participants choose to exclusively use or serve other market participants for a period of time. The Commission was not persuaded by Kingston that the facts of GH-3-97, RH-3-90 and MH-4-96 are fundamentally different from the circumstances of the Application and that the Priddle Report lacks nuance and omits context. The Commission is of the view that important principles in these cases regarding competition are applicable given that

⁷⁹ In final argument, Kingston argued that "Secure has not demonstrated that its proposed blending operation is needed in the public interest"

⁸⁰ Canadian Natural only indicated support for providing an alternative truck receipt location.

⁸¹ *Supra* note 27.

⁸² NEB, *NOVA Gas Transmission Ltd.*, [MH-031-2017 Reasons for Decision](#), Filing ID [A92071](#) (May 2018) at 62.

Secure will represent a market for crude oil optimization and it is in the public interest for shippers to be able to access that market.

The Commission agrees with Kingston that competition is not an end in-and-of itself but is a consideration for the public interest aimed at ensuring benefits to stakeholders.

Further, the Commission disagrees with Kingston's position that only Secure's private interests are benefitted by the Application. Similarly, the Commission disagrees with the apparent elevation by Kingston of a group of producers' interests over all other interests. This narrow focus, which appears to primarily discount Secure and aggregators, ignores that producers will make their own business decisions based on their circumstances and risk tolerances. Any agreements a producer makes with an aggregator are expected to be entered into freely. If the Commission were to limit the options available to producers and aggregators on the basis of elevating the "producer-shipper", the effect would be to prevent the market from working, and negatively impact the competition between parties, which functions to provide increased shipper choice. In this case it would be the choice of the shipper whether to use Secure's service.

Potential factors not in the public interest

Some of the intervenors in this proceeding expressed opposition to Secure's application with respect to the impacts of blending and potential impacts on the Settlement Agreement. Kingston raised several concerns about potential detriments to producers and Westspur shippers. The Commission provides the following on the concerns of potential negative impacts of directing an extension of facilities.

Devaluation of the commingled stream

The Commission acknowledges intervenor concerns regarding the potential degradation of the Westspur Pipeline commingled oil stream resulting from activities such as heavy crude oil blending. As discussed in **Sections 3.3.2 and 4.2.2**, the Commission is of the view that providing service to Secure will not result in a material impact to the quality of the crude stream.

Construction of new facilities

The Commission agrees with Kingston that constructing new pipelines would require deploying capital, would come with incremental environmental impact, and might impact other public interest benefits (depending on the subsequent choices made by Kingston and its affiliates regarding the use of the existing facilities). However, there is a strong and compelling interest in facilitating open access to common carrier pipelines as well as competition and choice, which the Commission finds outweighs the burden of new facilities. As detailed above, while solutions are encouraged to utilize existing facilities, ultimately it is in the public interest to require an extension of facilities.

The Settlement Agreement

Kingston argued that granting Secure's requested relief would risk collapsing the Settlement Agreement, resulting in loss of various public interest benefits flowing to producers and shippers from the Settlement Agreement. However, the Commission finds that Kingston's evidence does not establish whether the Settlement Agreement would be terminated as a result of this decision or whether it would result in a likelihood of disruption to the Settlement Agreement. The Settlement Agreement is also discussed earlier by the Commission in **Section 3.3.2**.

Even if the Settlement Agreement were to be terminated, the Commission is of the view that Kingston's alleged benefits from the Settlement Agreement appear overstated:

- Kingston’s evidence did not persuade the Commission that producer netbacks and interests would be harmed by granting the requested relief. Although Settlement Agreement parties’ revenues may be reduced, the Commission believes the market will achieve a more efficient outcome with increased shipper choice. The Commission agrees with the Priddle Report that this would restore the benefits that Secure and its customers were denied when blended products from Secure’s Alida Terminal could not access the Westspur Pipeline.
- Kingston argued that the Settlement Agreement resulted in the end of the Complaint Proceeding and related Court actions, and that termination of the Settlement Agreement would likely result in regulatory complaints. The Commission acknowledges that the Settlement Agreement resolved numerous issues but notes the Settlement Agreement has also created new issues, such as the ones giving rise to this Application. The likelihood of future complaints is also determined in large part by the conduct of Kingston itself and can be minimized through measures such as consensual blending, appropriate tariff provisions, and increased transparency with interested parties.
- The Commission finds that the setting of tolls and Affiliates Code of Conduct are also matters within Kingston’s control that do not necessarily need to be tied to the Settlement Agreement. These issues are addressed further in Chapter 7.
- Kingston’s arguments regarding orderly blending and double-dipping were discussed in **Section 4.2.2**. The Commission is not convinced that “double-dipping” is a significant concern and is of the view that orderly blending has not been demonstrated to be relevant to the Application.

Given that the Settlement Agreement itself is being raised by Kingston as a reason to block common carriage requirements when Secure’s request is compliant with the tariff, the Commission places low weight on the potential public interest value of this particular agreement. Overall, the Commission places much higher weight on the public interest of promoting open access on the Westspur Pipeline. Open access remains a consideration of overriding importance.

4.4 Undue burden

Consideration of the public interest alone is not sufficient to grant the relief of an extension of facilities. The Commission must also consider whether there is an undue burden on Kingston. This must be considered and balanced against public interest considerations.

The Commission finds that there is no undue burden on Kingston from being ordered to provide new facilities. Secure has agreed to pay the reasonable costs in that regard.

4.4.1 Submissions

Views of Secure included the following:

- Secure expects that the cost of new pipelines and related facilities relating to the requested service, if necessary, would be approximately \$1 to \$2 million.

- Notably, the costs associated with construction of new pipelines make up a very small portion of the overall estimate in the Shapko Report, consistent with Secure's views on costs for new pipelines.
- “Undue burden” is not defined in the CER Act; however, in considering the NEB Act's equivalent of subsection 239(3), the [NEB] has held that where a shipper is prepared to cover the costs of new facilities, there will not be any undue burden on the pipeline company.
- As there is existing capacity on the Westspur Pipeline, no incremental investment by Kingston is required to expand its pipeline capacity to accommodate the requested service. Based on the foregoing, there will be no undue burden placed on Kingston, and the interconnection should be ordered.
- If the Commission grants the requested relief, it would effectively be enforcing Kingston's existing statutory obligations. The potential that Kingston may in the future be required to similarly comply with its statutory obligations in accommodating a similar request for service is not an undue burden – it is simply the burden of being a regulated pipeline company.
- Secure submitted that its request for service is compliant with the Westspur Pipeline tariff, particularly the Westspur Rules and Regulations. Indeed, the service that Secure is requesting is the exact service that Kingston currently provides to its affiliate, Kingston Marketing Limited at the MIW in Manitoba. Secure stated that Kingston has measures at its disposal to monitor compliance with the crude specification. If Secure's crude oil does not meet the Westspur Pipeline crude specification, then Kingston is under no obligation to accept it.
- Secure stated that the existing facilities are currently sitting idle and can be brought back online with only modest costs and no undue burden on Kingston. The fact that the existing facilities are provincially regulated is no barrier to their use to accommodate service on a CER pipeline. Secure committed to pay the costs associated with alterations that the Commission deems reasonable to bring the existing facilities into full compliance with the *Canadian Energy Regulator Onshore Pipeline Regulations* (which reference the CSA Standard Z662).

Views of Kingston included the following:

- Granting the relief requested in the Application would set a precedent that would likely result in an undue burden on Kingston. In particular, directing Kingston to facilitate connections to the Westspur Pipeline for one midstream company such as Secure would substantially increase the risk that Kingston would receive demands for similar access from other midstream companies. The proliferation of additional, redundant facilities that Kingston would be required to provide, not only for Secure but also for any other midstream company, in order to facilitate butane, NGL and heavy oil blending operations would unduly burden Kingston.
- Costs associated with constructing the redundant receipt connection and delivery connection would be incurred at a time when Canadian producers and midstream service providers are facing challenges accessing capital. It is not in the public interest to deploy capital on the construction of redundant facilities, particularly in light of recent developments in global oil markets.

4.4.2 Views of the Commission

The Commission finds that requiring adequate and necessary connections will not result in an undue burden to Kingston. This finding, combined with the finding above regarding public interest, weighs in favour of an extension of facilities.

The Commission finds that there will be no undue burden from the cost of construction of the required facilities as a result of Secure's willingness to cover any reasonable costs to construct or modify facilities.⁸³ As discussed in **Section 4.2**, the Commission is of the view that only the market can determine whether Secure's Alida Terminal will be economically viable in the long term⁸⁴; there is a risk that Secure may not attract sufficient volumes or operate long enough to allow Kingston to recover its costs. The Commission addresses Kingston's proposed risk mitigation of requiring a take or pay agreement in Chapter 5.

The Commission finds that the risk of under-utilization does not pose an undue burden to Kingston. While deploying capital is a burden on any company, Kingston has reasonable assurance that it will be able to recover all prudently incurred costs. Kingston did not provide evidence demonstrating any material impacts to its financial strength or on its other capital projects as a result of deploying capital to construct the necessary facilities.

The Commission also acknowledges Kingston's argument that approving the connection facilities would trigger potential demands for similar access from other midstream companies but finds the assertions made by Kingston to be speculative and without compelling evidence of pending or likely requests. In any event, future demands that Kingston fulfill its statutory obligations cannot be an undue burden, or the continued ownership of a common carrier pipeline, would itself be unduly burdensome.

For all these reasons, the Commission directs an extension of facilities, as requested by Secure.

⁸³ [MH-1-2009](#), *supra* note 13 at 23 and 26.

⁸⁴ The Commission also provides the finding that Secure has demonstrated that connection facilities are likely to be used and useful.

5 Tolls for requested service

In its Application, Secure asked the Commission to determine tolls for the requested Alida Delivery and Alida Receipt points.

5.1 Submissions

Views of Secure included the following:

- If Secure and Kingston enter into an agreement to use the existing provincially licensed facilities for a reasonable cost Kingston would be compensated for its costs through an agreement. Secure has already fully reimbursed Kingston Saskatchewan for its capital costs associated with the existing facilities.
- Proposing to build new facilities to replace existing facilities that are less than eight years old, and that have been fully paid for, would be commercially unreasonable and imprudent.
- Secure has committed to paying any reasonable capital costs associated with the interconnections (if required), and the resultant tolls should reflect the low costs to Kingston to provide the requested service. Using the new Kingston tolls effective 1 April 2020, the toll for transportation from the Secure Alida Terminal to Cromer should be \$4.730/m³ based on \$4.630/m³ for transportation on Westspur and \$0.10/m³ for the interconnection.
- The tolls should not be higher than the Alida to Cromer toll. The pipelines between the Secure Alida and Kingston Alida terminals are approximately 350 m long. Thus, a toll similar to that charged by Kingston to transport oil from the MIW Facility to Cromer (i.e., \$0.10/m³) is appropriate.
- Historical operations at the Secure Alida Terminal support a \$0.10/m³ toll for the interconnection facilities. The Secure Alida Terminal received on average approximately 83 500 m³/month of crude oil from the Westspur Pipeline and delivered over 100 000 m³/month of blended crude (including trucked-in volumes) to the Westspur Pipeline. Assuming similar operational volumes, a \$0.10/m³ toll for each way on the interconnection pipelines would result in approximately \$220,000/year to Kingston. This would roughly compensate for the estimated operation and maintenance costs
- The tolls on the Westspur Pipeline are apparently market-based, meaning that cost-of-service information is not necessarily determinative of the appropriate toll.
- In the alternative, Secure submits that the Commission could order the construction and operation costs of the Reversal Line and Delivery Line, and other associated facilities, to be rolled-in to the existing tolls on the Westspur Pipeline. The pipelines and facilities required to access the Secure Alida Terminal will be available for use by all shippers on the Westspur Pipeline. Further, given the associated costs are limited, it is unlikely that there would be a significant toll impact.

Views of Kingston included the following:

- If the Commission were to order interconnecting facilities between Secure's Alida Terminal and Westspur Pipeline, Kingston would have to apply a tolling methodology

and tariff conditions similar to that applied to all Kingston shippers applicable for that tolling area.

- The Westspur Tariff structure was a market-based tolling methodology.
- New pipelines fall under the definition of Dedicated Facilities under the Westspur Settlement. In addition to the applicable Alida Terminal posted toll, Secure would also be charged an additional toll composed of a dedicated facilities capital surcharge and the operating toll component.
- In order to address the risks related to recovery of the Capital Surcharge, Kingston and Secure will be required to negotiate the terms of a take or pay agreement for the term of the capital recovery for the Dedicated Facilities. Additionally, Secure will be required to meet the financial assurance provisions set out in section 21 of the Westspur Tariff.
- Tolls for any facilities required to grant Secure's requested relief should be set in accordance with the "cost-based/user pay" or "cost causation" principle.
- Secure did not provide evidence addressing Kingston's concerns about counterparty credit risk. Forcing Kingston to invest in this new infrastructure where there is significant risk that it will not be able to recover capital would unduly burden Kingston.

Views of other participants included the following:

- Crescent Point argued that Secure's rolled-in tolling request is without merit and submitted that the Alida Terminal facilities are not an integral component of the existing Westspur Pipeline System. The best way for the Commission to protect against cross-subsidizations is to ensure shippers who are responsible for causing what would amount to a new service (i.e., receipt and delivery points and access to Alida) would be responsible for paying those costs. There is no need for the Commission to depart from its well-established tolling principles in these circumstances.

5.2 Views of the Commission

The Commission finds that the toll between the MIW and the Westspur Pipeline, currently \$0.10/m³, provides an upper cap for the potentially just and reasonable and not unjustly discriminatory toll for the interconnection between the Secure Alida Terminal and the Westspur Pipeline and therefore, approves a toll of \$0.10/m³. The Commission agrees with Secure and Kingston that the interconnection toll would be added to the Alida to Cromer toll.

The Westspur Pipeline uses market-based rates, rather than cost of service tolls. Secure submitted that the toll for the 350 m interconnecting facilities should be \$0.10/m³ or less, which shows that a toll of this level would be accepted by the market. Similarly, the toll to move product 500 m between the MIW and the Westspur Pipeline is \$0.10/m³, which also has been accepted by the market.

The Commission agrees with Kingston that it should have the opportunity to earn a reasonable return and recover prudently incurred costs⁸⁵. The Commission is of the view that Secure's commitments and the Westspur Tariff provide sufficient assurance that Kingston will have such

⁸⁵ Kingston indicated that the facilities to connect Secure to the Westspur Pipeline fall under the definition of Dedicated Facilities under the Westspur Settlement. The Commission gave little weight to submissions regarding the Westspur Settlement as it is not a tariff and has not been approved by the CER or the NEB.

an opportunity. The Commission finds that historical volumes provide the best estimate of future volumes and therefore, Secure's estimated volumes can reasonably be used to estimate the approximate monthly revenue Kingston would receive.

The Commission does not agree that Kingston is being forced to invest in new infrastructure, as Kingston submitted. Pipelines already exist which have the sole purpose of connecting the Secure Alida Terminal with the Westspur Pipeline and these facilities have been paid for by the operators of the Secure Alida terminal. Kingston submitted that the Settlement Agreement precludes Secure from using the existing facilities. As stated in Chapter 4, in the future, it is possible that Kingston and its affiliate choose to resume discussions and negotiate Secure's access to the Westspur Pipeline using the existing facilities. Other solutions may include the purchase of these facilities by Secure or the transfer of these facilities to Kingston from its affiliate.

The Commission is of the view it would be appropriate for Secure to pay for the reasonable costs associated with using the existing facilities, corresponding with the user pay principle. However, if facilities that are currently provincially regulated cannot be utilized then Kingston must construct new facilities. Kingston freely entered into the Settlement Agreement and this choice may have associated cost consequences. Ultimately, the recent and future decisions of Kingston and its affiliates will determine whether Kingston incurs the costs of new redundant infrastructure and the resulting level of risk that Kingston will assume.

The Commission finds that the toll from Westspur to MIW, currently \$0.10/m³, provides an upper cap for the toll that should be charged to move product 350 m between the Secure Alida Terminal and the Westspur Pipeline, whether existing facilities are used or new facilities are constructed, based on the following:

- the acceptance of a market-based rate of \$0.10/m³ for short interconnections with blending facilities;
- the similar length of the pipelines connecting Westspur with MIW and with Secure;
- the estimated cost to provide and maintain the connections and the likely revenues Kingston will earn; and
- the ability for Kingston affiliates to transfer the existing facilities.

Tariff provisions

Like any other shipper, Secure would be subject to the tolls and terms and conditions of service specified in the CER tariff filed by Kingston for the Westspur Pipeline. This includes the tolls for moving product from Alida to Cromer, the calculation of tolls for volumes directed to the Alida Terminal that re-originate for further transportation to Cromer⁸⁶, and quality equalization.

The Commission finds that Secure has demonstrated that it would be discriminatory for Kingston to require Secure to enter into a take-or-pay agreement. In particular, the Commission notes that there is no requirement for a take-or-pay agreement in the Westspur Tariff. The Westspur Tariff contains financial assurances provisions, which will apply to

⁸⁶ For clarity, the toll for delivery from an upstream receipt point to Secure's Alida Terminal would be calculated as the difference between the toll from the originating upstream receipt point to Cromer, Manitoba, and the toll from the Alida Terminal to Cromer, Manitoba. The interconnection toll would of \$0.10/m³ would be added to this amount.

Secure. The Commission agrees with Secure's submission that the terms and conditions of access to a pipeline must be reflected in the applicable tariff in order to comply with the open access principle.

Kingston argued that a take-or-pay agreement would mitigate and address the risks associated with not being able to recover the capital costs of the connections. As found above, the Commission is of the view that without a take-or-pay agreement, there is sufficient assurance that Kingston will have the opportunity to earn a reasonable return and recover prudently incurred costs. Therefore, the Commission is not persuaded by Kingston that requiring a take-or-pay agreement would not be unjustly discriminatory. Based on all the foregoing, the Commission finds that it would be unjustly discriminatory to impose take or pay agreements selectively on Secure.

Rolled in tolls

Secure referenced no supporting evidence for its suggestion in final argument that the costs of the facilities be rolled in. The mechanism for rolling in capital costs to the rate base is clear when a pipeline operates under a cost of service toll methodology. The mechanism for rolling in capital costs is unclear when market-based rates are used, as in this case. Given that no batching facilities are to be constructed to provide service to Secure, the facilities required are reflective of those contemplated by Secure in offering to pay all reasonable costs. Therefore, the Commission places little weight on Secure's submissions regarding rolled in tolling. The Commission accepts the argument from Crescent Point that costs in this case should be borne by the user. This is supported by the principle of cost causation.

6 Terms of Service

The terms of service for a pipeline are set out in its tariff, as defined in section 225 of the CER Act. Secure, as a part of its requested relief, asked that the Commission prescribe terms for the Alida Delivery and the Alida Receipt pursuant to section 226 of the CER Act, including service on terms that are not unjustly discriminatory and consistent with Kingston's published tariff for the Westspur Pipeline. As set out in section 235 of the CER Act, Kingston, as the pipeline company, must not make any unjust discrimination in tolls, service or facilities against any person or locality.⁸⁷

6.1 Submissions

Views of Secure included the following:

- Secure's requested service is not prohibited by the Westspur Rules and Regulations; Secure's receipts of crude oil from, and deliveries of crude oil to, the Westspur Pipeline will comply with the Westspur Rules and Regulations, including the crude specification, as well as the crude specifications of downstream carriers, including the Enbridge Mainline.
- Secure is asking for access to the same service on the Westspur Pipeline that Kingston is already providing to its affiliate at the MIW. The refusal by Kingston to provide service to Secure, while offering it to other parties is unjust discrimination contrary to section 235.
- In section 6(d) of the Westspur Rules and Regulations, a shipper expressly acknowledges that crude oil tendered by it to the Westspur Pipeline is accepted by Kingston on the condition that it shall be subject to changes⁸⁸.
- The Equalization Procedure is used on the Westspur Pipeline to address changes contemplated in section 6(d) of the Westspur Rules and Regulations to crude tendered onto a pipeline by a shipper against the crude delivered to the shipper. As confirmed by Kingston, the Equalization Procedure would apply at the Secure Alida Terminal.
- There are a number of provisions of the Settlement Agreement that appear to relate to or affect service and tolls on the Westspur Pipeline, and that are not published in Kingston's tariff for the pipeline.⁸⁹ Such terms and conditions must be filed with the CER or otherwise reflected in a filed tariff so that the Commission can ensure that the terms and conditions of service are not unjustly discriminatory or otherwise contrary to the CER Act.

⁸⁷ The burden of proof is as set out in section 236 of the CER Act.

⁸⁸ Changes include but are not limited to, density, quantity, value and quality, while in transit as may result from the transportation (and all services and procedures related thereto), commingling or intermixing thereof, including, without limiting the generality of the foregoing, the mixing of a Shipper's Crude Petroleum with other Crude Petroleum in the facilities of the Carrier.

⁸⁹ These provisions are described in the confidential Appendix II.

- Secure stated that the Producer Group pays lower tolls for service on Westspur Pipeline than non-Settlement Agreement parties.⁹⁰

Views of Kingston included the following:

- Secure's request for access, proposed shipments on, and receipts of shipments do not specifically contravene the Westspur Pipeline tariff.
- The Westspur Pipeline tariff does not expressly restrict crude petroleum that has been subjected to blending activities from being delivered to the Westspur Pipeline. Crude petroleum delivered to the Westspur Pipeline must, however, meet the quality specifications set forth in the Westspur Pipeline Tariff.
- Secure is not asking to deliver crude oil to an established Westspur Pipeline receipt point for delivery to an established Westspur Pipeline delivery point. It is requesting new facilities to enable it to off-take Westspur Pipeline commingled line fill for blending at its Alida Terminal for re-delivery onto the Westspur Pipeline for the commercial benefit of Secure to the economic detriment of the Westspur Pipeline shippers and Kingston Midstream. This service is not available under the governing tariff.
- The terms of the Settlement Agreement affecting service on the Westspur Pipeline apply to all Westspur Pipeline shippers, regardless of whether those parties are parties to the Settlement Agreement. As a result, parties to the Settlement Agreement are not receiving different terms and conditions of service on the Westspur Pipeline compared to non-settlement parties.
- There are not any conflicts between the Settlement Agreement and the tariff. If any conflicts were identified, Kingston would be required to file amendments to the tariff to comply with the Settlement Agreement.
- The quality equalization procedures account for the changes of the quality of the crude from the point it is receipted on the Westspur Pipeline and when it is delivered to the delivery point.
- If Secure's Application is successful, it will require a commercial agreement related to the off-take of commingled crude oil to compensate for the economic impacts to both Kingston and the members of the Producer Group.
- Shippers and the pipeline operator can and do negotiate toll and tariff matters in settlement agreements, as was done in the Westspur Settlement Agreement. Shippers, producers, and pipeline operators can negotiate terms of service and document them in an agreement outside of a tariff. This does not make the negotiations or any resulting agreement a "tariff" under section 225. It is solely the published tariff that can govern the tolls, conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company, including rules respecting the calculation of tolls. The Westspur Settlement Agreement is not the tariff for the Westspur Pipeline, and the published tariff which is consistent with the Westspur Settlement Agreement is the governing tariff.

⁹⁰ The details of this allegation are contained in the confidential Appendix II.

Views of other participants included the following:

- Canadian Natural stated that the existing Equalization Procedures Guide does not compensate crude oil shippers for streams that have different levels of butane and are commingled together, whether the butane is naturally occurring or commingled with the common stream.”
- Vermilion stated that the quality equalization procedures is not adequate to compensate shippers for the value of their crude oil subject to blending with butane being commingled with the common Westspur stream. There are no mechanisms within the quality equalization procedures for the party blending butane, to share the improved value of blended crude with producers or/and shippers upstream of the blending location.
- Ridgeback said quality equalization procedures in the tariff are not adequate to compensate shippers from impacts because of blending.

6.2 Views of the Commission

The Commission finds that the requested service is permitted under the Westspur Tariff. Adding the service as requested by Secure is consistent with common carriage requirements. The Commission directs Kingston to file an updated Westspur Tariff with Secure’s Alida Terminal listed as a receipt and delivery point in a timely manner in advance of the connection facilities being operational.

For clarity, Secure is not requesting to off-take linefill, it is requesting to receive oil nominated to it and deliver oil to the Westspur Pipeline for delivery downstream. This service is available to shippers currently, and with the addition of the Secure Alida Terminal as a receipt and delivery point in the Westspur Tariff, this specific service to and from Secure will be available under the tariff. Crude oil being delivered off the Westspur Pipeline constitutes the end of a shipment, regardless of whether it is blended and then supplied to the Westspur Pipeline. Any oil supplied by a receipt point that is also a delivery point is a new shipment.

The issue raised by Secure in its reply evidence (but not pursued in Final Argument) about whether Producer Group shippers pay a different toll than non-Settlement Agreement parties is discussed further in the confidential Appendix II. The Commission has not made any findings on this tolling issue at this time but recommends that the CER consider this issue in a future financial regulatory audit as discussed in Chapter 7.

Need for commercial agreements

Kingston said that Secure would be required to have commercial agreements to compensate Kingston and the Producers Group related to economic impacts of the off-take of commingled crude oil. Such a mechanism already exists: the Westspur Tariff. It would be unreasonable to have one shipper compensate another shipper at a higher level because of a private commercial agreement outside of the tariff with specific benefits related to blending room. Kingston provided no compelling reason why the Commission should, through regulation, require compensation related to a private commercial agreement. This is particularly the case where Secure can only take up blending head space with rights granted to Secure by a shipper.

The Commission notes that there is an Equalization Procedure that exists in the current tariff and it is the tariff that governs. While some current shippers expressed a view that equalization

procedures in the current tariff are not sufficient to compensate for blending, there was insufficient detail provided about what specific changes to equalization procedures may be necessary. This reduced the weight the Commission gave to such submissions. However, this in no way negates the right of shippers to make future complaints about any tariff provisions.

All terms of service must be included in the tariff

The Commission is generally supportive of parties resolving or reaching settlement agreements as long as those agreements do not negatively impact statutory obligations. All terms and conditions of access to a pipeline must be reflected in a public tariff. Otherwise, such terms and conditions, even if negotiated, cannot be relied on.⁹¹ This long standing approach of the NEB and Commission is reinforced by section 225 of the CER Act which broadly defines a tariff as meaning “a schedule of tolls, conditions, classifications, practices or rules and regulations applicable to the provision of a service by a company, and includes rules respecting the calculation of tolls”. Under section 227, “A company must file each tariff it makes, and any amendments made to a tariff, with the regulator”.

All shippers and potential shippers must be able to rely on the public tariff. The Commission does not accept the submission of Kingston that the public tariff would only be amended if conflicts are identified. This could lead to uncertainty about whether conflicts exist. In addition, not all potential shippers have access to the Settlement Agreement and these potential shippers currently have no way of verifying conflicts or different requirements between the Settlement Agreement and the tariff. It is the public tariff that must include all terms and conditions of access.

Kingston stated that the Westspur Settlement is not a tariff but acknowledged that the Settlement Agreement established the tolling methodology for the Westspur Pipeline. If Kingston intends to rely on the Westspur Settlement for the establishment and calculation of tolls, it would need to file it as a tariff with the CER. The Commission also has concerns about section 5.1 of the Westspur Settlement, which states: “In the event of a conflict between this Westspur Settlement and the Westspur Rules, this Westspur Settlement shall govern.” For clarity, provisions of any agreement or document outside of the tariff cannot override the service provisions of the tariff.

The Commission recommends that the CER consider these issues related to the Westspur Tariff, the Westspur Settlement and the Settlement Agreement in a future financial regulatory audit, as discussed in Chapter 7. A brief discussion of specific provisions of the Settlement Agreement is discussed in the confidential Appendix II.

⁹¹ NEB, *Complaint by BP Canada re TransCanada Daily Existing Capacity Open Season, Letter Decision*, Filing ID [A53899](#) (5 September 2013) at 5.

7 Regulatory oversight and disposition

Throughout the hearing, a number of issues were raised regarding Kingston's conduct and the Settlement Agreement. In addition to the Commission's authority to grant the specific relief requested by Secure, the Commission has authority in the broadest possible terms under the CER Act to ensure that there is appropriate regulatory oversight of the Westspur Pipeline.⁹² Section 226 of the CER Act provides that the Commission may make orders with respect to all matters relating to traffic, tolls and tariffs. The Commission may also inquire into any matter under the CER Act⁹³ and the CER may conduct compliance audits.

When looking at the Application in its entirety, the evidence and all the arguments, the Commission has significant outstanding concerns (some which were discussed in the confidential Appendix II), including:

- the expectation of future complaints on the Westspur Pipeline;
- whether all terms of service for the Westspur Pipeline are included in the Westspur Tariff;
- whether Producer Group shippers pay a different toll than non-Settlement Agreement parties;
- potential unenforceable provisions in Kingston's commercial agreements (i.e., they are inconsistent with Kingston's statutory obligations or the rights of shippers);
- the risk that Kingston continues to fail to fulfill its common carrier obligation (i.e., the possibility that Kingston may deny access to the Westspur Pipeline in the future to protect a commercial agreement); and
- persuasive evidence that there is a perceived abuse of market power.

These concerns support the potential need for further regulatory oversight over Kingston and the Westspur Pipeline. To address ongoing concerns, the Commission intends to examine Kingston's current Group 2 status. Further, the Commission also recommends a financial regulatory audit of Kingston with recommended areas of focus listed below.

7.1 Group 2 Regulation

For financial regulation, pipeline companies are divided into two groups: Group 1 and Group 2 companies. Group 1 companies have generally been identified as pipeline companies with extensive CER-regulated systems. All other CER-regulated companies are treated as Group 2 companies. Kingston is currently a Group 2 company. The financial regulation of Group 2 companies is normally carried out on a complaint basis, with a consequent reduction in financial reporting requirements. Group 2 companies are not normally required to provide the detailed information to support a tariff filing required of Group 1 companies.

⁹² British Columbia Hydro and Power Authority v Westcoast Transmission Limited, [1981] 2 F.C. 646 (Fed. Court of Canada – Appeal Division), at para 17. The Commission in Letter Decision, Concerning Tolls and Conditions of Service for the Suffield North Pipeline, Filing ID [C12297](#) (7 April 2021) at 6 & 7 concluded that previous direction from the Court regarding toll and tariff provisions on the NEB Act have direct application to comparable CER Act provisions.

⁹³ Sections 32 to 34 of the CER Act.

When complaint-based regulation of Group 2 companies was instituted, the NEB expected pipeline companies maintaining effective communications with their shippers and providing sufficient notice of pending changes to tariffs would minimize complaints.⁹⁴ As described in Chapter 2, ownership of the Westspur Pipeline changed in late 2016 and a complaint against the operators was filed with the NEB in mid-2017. Towards the end of a lengthy hearing process, the complaint was withdrawn in 2019 when the Settlement Agreement was reached, but this resulted in the termination of the Former Connection Agreement⁹⁵ and contributed to the current Application. Kingston has indicated that the Commission's decision on this complaint could collapse the Settlement Agreement, which may result in further regulatory complaints.

The Commission reminds Kingston that all pipeline companies are expected to comply with the CER Act, applicable regulations, and decisions, orders, and directives of the Commission.⁹⁶ Kingston must provide shippers with enough information regarding tolls and tariffs to enable them to determine whether a complaint is warranted. There may also be shippers without the resources to make a complaint and the regulation of Group 2 companies relies on the Commission being able to review service and tolling issues for the benefit of all interested parties.

In this case, as was discussed above in Chapter 3, the Commission found that there is an ongoing perception of an abuse of market power by Kingston. While market power was not determinative of the relief granted by the Commission, outstanding issues related to market power necessitate further regulatory process and, potentially, additional oversight by the CER.

As noted in Chapter 3, the Commission is of the view that particularly in the case of a Group 2 company regulated on a complaint-basis, as Kingston has been to date, the Commission should inquire and respond in a fulsome manner when a shipper or other interested party tenders evidence that gives rise to a reasonable perception of the abuse of market power. The Commission must address this perception of market power to ensure the presumption – which exists in the context of Group 2 companies absent a complaint - that tolls are just and reasonable remains valid.

The Commission is of the view that Kingston's designation as a Group 2 company for the purpose of financial regulation needs to be re-examined in a timely manner.

Within 60 days of the date of this Decision, Kingston is directed to file comments with the CER as to whether it should be regulated as a Group 1 or Group 2 company. Kingston should provide any reasons it believes it should continue to be regulated as a Group 2 company. In addressing how extensive its system is, Kingston may choose to discuss factors, including:

- the number of shippers that use the pipeline;
- the length of the pipeline and its capacity;
- the role of the pipeline in the area it serves;
- any other egress options available to potential shippers;

⁹⁴ NEB Letter dated 23 January 1985, Schedule "C" of that letter was attached to the *NEB's Reasons for Decision OH-1-84* (23 January 1985) at 24.

⁹⁵ TEMPL Saskatchewan (now Kingston Saskatchewan) is a party to the 2019 Settlement Agreement and terminated the Former Interconnection Agreement because it was incompatible with the Settlement Agreement.

⁹⁶ CER Letter dated 10 July 2020, [Financial Regulation of Group 2 Companies](#) (10 July 2020).

- the success of Group 2 regulation in minimizing regulatory burden for the pipeline and its shippers;
- the complexity of its system operations and whether any issues are contentious;
- the toll methodology used for the pipeline; and/or
- any other factors Kingston considers are relevant.

As appropriate, the Commission will then provide further direction, such as a timeline for comments from other interested parties and whether Kingston should have a final right of reply. After considering all submissions, the Commission will decide whether Kingston should continue to be regulated as a Group 2 company for the purpose of financial regulation and whether continued exemption from filing requirements is appropriate.

7.2 Financial Regulatory Audit

The CER may perform a financial regulatory audit of a company's records. When identifying companies to audit, the CER follows a risk-based approach that takes into account, among other things, the relationship between the company and its shippers, and the availability of current financial information to the CER. The final audit report is placed on the public record and served on interested parties.

The Commission recommends that the CER consider the unresolved concerns identified in the introduction to Chapter 7 in assessing Kingston's risk and relative priority for a financial regulatory audit in the future. The Commission also recommends that the next financial regulatory audit of Kingston include examination of the following:

- whether Kingston's published tariff is reflective of the terms, conditions, tolls, classifications, practices, and rules and regulations that meet the definition of a tariff;
- whether any contentious detailed operational practices need to be included in the Westspur Tariff to ensure shippers understand the terms of service and to promote certainty and transparency;
- the interaction between Kingston and its affiliates, including evaluation of the Affiliate Code of Conduct and Kingston's adherence to it, as well as whether a code of conduct is necessary to promote compliance and to prevent the favourable treatment of affiliates, or the perception of such treatment, by Kingston.
- how Kingston consults with and notifies its shippers regarding potential changes to tolls, tariffs, or operations; and
- whether Kingston has entered into any agreements that:
 - either in whole or in part, meet the definition of a tariff under the CER Act; or
 - contain any unenforceable provisions (i.e., are inconsistent with Kingston's statutory obligations or are in conflict with the Westspur Tariff).

7.3 Disposition

The Commission has attached Order MO-020-2021 which reflects its disposition of the Application as well as additional regulatory oversight.

Appendix I

Past Rulings and Procedural Letters

Date of Ruling	Commission Ruling	Filing Number
11 June 2020	<p>Ruling No. 1 – Motions regarding Confidential Treatment.</p> <ul style="list-style-type: none"> • The Commission directed Kingston to file the full unredacted Settlement Agreement in order for the Commission to determine relevance. • The Commission declined to grant confidentiality to Kingston on specific responses provided by Kingston to Commission information requests. 	<u>C06773</u>
21 August 2020	<p>Ruling No. 2 – Motion on Confidential Treatment of Settlement Agreement</p> <ul style="list-style-type: none"> • The Commission directed Kingston to file portions of the Settlement Agreement that had previously been redacted. • The Commission also directed Kingston to reach an undertaking with Secure. 	<u>C08014</u>
1 September 2020	Procedural Letter and Timetable of Events	<u>C08124</u>
21 October 2020	Ruling No. 3 – Notice of Public Hearing RH-003-2020 and Revised Timetable of Events	<u>C09040</u>
30 October 2020	Ruling No. 4 – List of Participants	<u>C09235</u>
19 November 2020	<p>Ruling No. 5 – Kingston Motion for Confidentiality</p> <ul style="list-style-type: none"> • The Commission granted the request by Kingston for confidential treatment of a former interconnection agreement and historical data that Kingston referred to in its Written Evidence. 	<u>C09722</u>
18 December 2020	Ruling No. 6 – Cardinal Energy Ltd. Request for Access	<u>C10534</u>

	<p>to the Settlement Agreement</p> <ul style="list-style-type: none"> • The Commission directed Kingston to provide access to the Settlement Agreement to Cardinal's legal counsel only, subject to an undertaking. • The Commission also granted Cardinal's request to file additional submissions. 	
2 March 2021	<p>Ruling No. 7 – Kingston Motion for Confidentiality dated 8 January 2021</p> <ul style="list-style-type: none"> • The Commission granted confidentiality of a response by Kingston to a Commission Information Request. • The Commission also required Kingston to provide the response where confidentiality was granted to Secure. 	<u>C11750</u>
3 March 2021	<p>Review of Ruling No. 6 – Cardinal Energy Ltd. Request for Access to the Settlement Agreement</p> <ul style="list-style-type: none"> • The Commission dismissed Cardinal's review and variance of Ruling No. 6 at Phase I for not having raised a doubt as to the correctness of the ruling. 	<u>C11901</u>
3 March 2021	<p>Procedural Update No. 1</p>	<u>C11825</u>
12 March 2021	<p>Ruling No. 8 – Motions to Compel Full and Adequate Responses to Information Requests</p> <ul style="list-style-type: none"> • The Commission dismissed some of the requests for full and adequate responses to information requests and granted others. 	<u>C11960</u>
22 March 2021	<p>Procedural Update No. 2</p>	<u>C12083</u>

Appendix II

Confidential Evidence and Views of the Commission

The description of evidence and reasons in this appendix are confidential and were sent only to Kingston and Secure.

Appendix III

Order MO-020-2021

ORDER MO-020-2021

IN THE MATTER OF the *Canadian Energy Regulator Act* (**CER Act**); and

IN THE MATTER OF an application by Secure Energy Services Inc. (**Secure**) for service and suitable and adequate interconnection facilities on the Westspur Pipeline pursuant to sections 32, 34, 226 and 239 of the CER Act (**Application**) under File OF-Tolls-Group2-K103-2019-01 01.

BEFORE the Commission of the Canada Energy Regulator (**Commission**) on 18 June 2021.

WHEREAS Kingston Midstream Westspur Limited (**Kingston**) is the holder of Certificate of Public Convenience and Necessity OC-4 issued with respect to the Westspur Pipeline;

AND WHEREAS Secure filed an Application dated 30 December 2019 requesting relief, including orders:

- directing Kingston to provide adequate and suitable facilities for an interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of delivering crude oil from the Westspur Pipeline to the Secure Alida Terminal (Delivery Connection), if these facilities are determined to not already exist, or declare that the existing facilities constitute a Delivery Connection, pursuant to subsection 239(3) of the CER Act;
- directing Kingston to provide adequate and suitable facilities for an interconnection of the Secure Alida Terminal to the Westspur Pipeline for the purpose of receiving, transmitting and delivering oil offered by Secure for transmission on the Westspur Pipeline (Receipt Connection), if these facilities are determined to not already exist, or declare that the existing facilities constitute a Receipt Connection, pursuant to subsection 239(3) of the CER Act;
- directing Kingston to deliver oil to the Secure Alida Terminal from the Westspur Pipeline via the Delivery Connection (Alida Delivery), and to receive, transport and deliver crude oil offered by Secure via the Receipt Connection for transmission on the Westspur Pipeline (Alida Receipt), pursuant to subsection 239(1) and section 34 of the CER Act;
- prescribing just and reasonable terms for the Alida Delivery and the Alida Receipt, pursuant to section 226 of the CER Act, including:
 - service on terms that are not unjustly discriminatory and consistent with Kingston's published tariff for the Westspur Pipeline; and

- just and reasonable tolls for the Alida Delivery and Alida Receipt calculated in a manner determined by the Commission;

AND WHEREAS the Commission sought comments on the Application and established further process through a timetable of events and procedural updates;

AND WHEREAS the Commission considered all the evidence and submissions from the parties;

AND WHEREAS the Westspur Pipeline is a common carrier oil pipeline and the Commission has determined that Kingston's common carrier duty extends to the service requested by Secure;

AND WHEREAS the Commission has determined that it would be in the public interest for Kingston to provide adequate and suitable facilities for the Delivery Connection and Receipt Connection on the Westspur Pipeline, and that no undue burden will be placed on Kingston;

IT IS ORDERED THAT:

1. Pursuant to subsection 239(1) of the CER Act, Kingston shall provide Alida Delivery and accept Alida Receipt on the Westspur Pipeline.
2. Pursuant to subsection 239(3) of the CER Act, Kingston shall provide adequate and suitable facilities connecting the Westspur Pipeline to the Secure Alida Terminal in the form of the Delivery Connection and the Receipt Connection, on the following conditions:
 - a. On an expedited basis following the date of this Order, Kingston shall consult with Secure and file with the Canada Energy Regulator (CER) a facility application pursuant to section 214 of the CER Act for the construction, if applicable, and operation of necessary connecting facilities between the Secure Alida Terminal and the Kingston Alida Terminal. These facilities must be able to transport the proposed crude oil volumes by Secure and the application must:
 - i. not include batching facilities or equipment;
 - ii. include a delivery pipeline for the transportation of crude oil from Kingston Alida Terminal to Secure Alida Terminal;
 - iii. include a reversal pipeline for the transportation of crude oil from Secure Alida Terminal to Kingston Alida Terminal; and
 - iv. include necessary facilities and equipment (e.g. pumps, lease automatic custody transfer units including online True Vapor Pressure monitoring and composite sampling systems, launching and receiving pigging facilities, leak detection system, valves, instrumentation and control systems). Facility and equipment in compliance with applicable federal and provincial regulations and that are at least equivalent in performance to those already installed on the Westspur Pipeline for providing similar services would be considered sufficient.

3. Pursuant to section 226, the Commission directs Kingston to file, within 30 days following the date of this Order, an updated Westspur Tariff that includes Secure's Alida Terminal as a receipt and delivery point, as well as the tolls to and from the Secure Alida Terminal.
4. Pursuant to sections 226 and 230:
 - a. The toll for the interconnection between the Secure Alida Terminal and the Westspur Pipeline is \$0.10/m³.
 - b. The tolls for delivery to the Secure Alida Terminal shall be calculated as the difference between the toll from the originating upstream receipt point to Cromer, Manitoba and the toll from the Alida Terminal to Cromer, Manitoba. The interconnection toll of \$0.10/m³ will be added to this amount.
 - c. The toll from the Secure Alida Terminal to Cromer Manitoba shall be the posted toll from Alida to Cromer. The interconnection toll of \$0.10/m³ will be added to this amount.
5. Pursuant to sections 32 to 34 and 226, within 60 days following the date of this Order, Kingston is directed to file with the CER comments as to whether it should be regulated as a Group 1 or Group 2 company.

Issued in Calgary, Alberta on 6 July 2021.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

Jean-Denis Charlebois
Secretary of the Commission