

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Annie Kuether

In the matter of whether the license of Thor) Docket No: 24-CONS-3001-CSHO
Operating, LLC (Operator) should be revoked.)
) CONSERVATION DIVISION
)
_____) License No: 36020

In the matter of the failure of Quito, Inc.) Docket No: 24-CONS-3072-CPEN
(Operator) to comply with K.A.R. 82-3-120.)
) CONSERVATION DIVISION
)
_____) License No: 33594

In the matter of the failure of Quito, Inc. and/or) Docket No: 24-CONS-3086-CMSC
Thor Operating, LLC to comply with K.A.R.)
82-3-120 and K.A.R. 82-3-133.) CONSERVATION DIVISION
)
_____) License No: 33594 & 36020

FINAL ORDER

At issue is the following: whether Quito, Inc. violated K.A.R. 82-3-120 by having unplugged wells on its expired license (Docket 24-3072), whether Quito and Thor Operating, LLC violated K.A.R. 82-3-120 and K.A.R. 82-3-133 by conducting oil and gas operations on wells listed under Quito's inactive and revoked (and expired) license (Docket 24-3086), whether Thor's license should be revoked (Docket 24-3001), and whether certain wells should be transferred from Quito's license to Thor's license (again Docket 24-3001). The Commission rules as follows:

I. Procedural Background

1. On July 13, 2023, the Commission granted a July 3, 2023, Commission Staff motion initiating Docket 24-3001. The Commission stated the purpose of the docket would be to consider whether Thor's license should be revoked and whether various wells should be transferred to Thor's

license.¹ In its motion, Staff identified wells on eight leases, where between April 6, 2023, and May 9, 2023, Staff had received Request for Change of Operator (T-1) forms attempting to transfer wells from Quito to Thor.²

2. On September 26, 2023, the Commission issued a Penalty Order in Docket 24-3072 against Quito, finding Operator had violated K.A.R. 82-3-120 because Quito remained responsible for unplugged wells on Quito's expired license. The order identified the wells at issue in Docket 24-3001, and other wells.³ Quito's license has been invalid since at least February 2023, when the Commission issued an order denying Quito's license renewal application in Docket 22-3115.⁴

3. On October 3, 2023, in Docket 24-3086, the Commission issued a Shut-In and Show Cause Order against Quito and Thor, because on July 18, 2023, Staff had found the Sears #30 – a well on Quito's license listed on the T-1 forms at issue in Docket 24-3001 – in operation.⁵ The Commission directed Quito and Thor to demonstrate why each should not be assessed a \$25,000 penalty.⁶

4. Thor appeared in Docket 24-3001, Quito requested a hearing in Docket 24-3072, and Thor and Quito jointly appeared in Docket 24-3086.

5. On December 7, 2023, the captioned dockets were consolidated.⁷ In May 2024, Thor motioned for summary judgment in Dockets 24-3001 and 24-3086; the Commission held the motion in abeyance so that it could hear evidence.⁸ The legal arguments raised in the motion shall be addressed in the Commission's analysis of the dockets below.

¹ See Docket 24-3001, Order Designating Presiding Officer and Setting Prehearing Conference, ¶ 2 (Jul. 13, 2023).

² Staff identified the wells as being located on the Appleby, Dearmond, Flossie-White, McFarland-Delong, Morton, Sears, Wall, and Williamson leases. *See id.*, ¶ 2.

³ See Docket 24-3072, Penalty Order at Exhibit A (Sep. 26, 2023).

⁴ See Docket 22-3115, Final Order (Feb. 9, 2023).

⁵ See Docket 24-3086, Shut-In and Show Cause Order, ¶ 9 (Oct. 3, 2023).

⁶ *See id.* at ¶ 13.

⁷ See Presiding Officer Order Consolidating Dockets and Regarding Electronic Service (Dec. 7, 2023).

⁸ See Order Regarding Motion for Summary Judgment (Sep. 10, 2024).

6. On October 8, 2024, the Commission held its evidentiary hearing. Commission Staff was represented by its Litigation Counsel Kelcey Marsh; Thor and Quito were represented by attorney John R. Horst.⁹ Parties acknowledge notice of the hearing was proper.¹⁰ At hearing, the Commission heard and accepted testimony from Staff witnesses Ryan Hoffman, Troy Russell, Thad Triboulet, Duane Sims, Nancy Borst, and Denise Klug, and Thor/Quito witnesses Mark McCann and Scott Goetz, all of whom submitted pre-filed testimony between May and July 2024.¹¹

II. Finding of Fact and Conclusions of Law

7. Under K.S.A. 74-623, the Commission has exclusive jurisdiction and authority to regulate oil and gas activities. No party contests, and Commission records indicate, Thor and Quito are (or were) Commission-licensed operators pursuant to K.S.A. 55-155, and that the wells at issue exist for production of hydrocarbons. The Commission thus has jurisdiction over these matters.¹²

Analysis: Docket 24-3072

8. The Penalty Order in this docket found Quito violated K.A.R. 82-3-120 because Quito remained responsible for 141 unplugged wells on Quito's expired license. Quito argues it ceased operating the wells after its license renewal application was denied in February 2023, and that it transferred 47 of the wells to Thor between April and May 2023.¹³ Whether Quito continued to operate the wells, however, has no bearing on whether Quito was responsible for the wells. Further, even if the transfers were valid or timely (directly at issue in Docket 24-3001), nearly 100 wells would remain. No party substantively contests that Quito is responsible for those remaining wells, or that

⁹ See K.A.R. 82-1-232(a)(2); Tr. 4:16-23.

¹⁰ Tr. 5:14-17.

¹¹ All pre-filed testimony was admitted into the record. See Tr. 12 (Hoffman); Tr. 29 (Russell); Tr. 46 (Triboulet); Tr. 52 (Sims); Tr. 56 (Borst), Tr. 64 (Klug), Tr. 67 (McCann), Tr. 82 (Goetz).

¹² See also Tr. 5:14-17.

¹³ See, e.g., Docket 24-3072, Request for Hearing.

they are unplugged, or that Quito's license is expired, or that such is not a violation of K.A.R. 82-3-120.¹⁴ The Commission finds the Penalty Order should be affirmed.

Analysis: Docket 24-3086

9. The Shut-In and Show Cause Order in this docket found Quito and/or Thor violated K.A.R. 82-3-120 and K.A.R. 82-3-133 by conducting oil and gas operations on a well listed on Quito's inactive, revoked license, and directed Quito and Thor to show why each should not be assessed a \$25,000 penalty. No party contests operations were being conducted on wells listed on Quito's inactive, revoked license. McCann and Goetz argue Quito did not conduct any operations after Quito's license renewal application was denied, but instead transferred the wells being operated to Thor, and that the Request for Change of Operator (T-1) forms submitted to the Commission gave Thor authority to operate the wells.¹⁵

10. Here we must first discuss the essentially non-existent difference between Quito and Thor. Mark McCann, the sole shareholder and officer of Quito, also owns or owned a slew of other companies, including Kansas Production Company, McCann Field Services, and Stellar Field Services.¹⁶ Kansas Production Company, which McCann runs as the sole shareholder and officer, owns interests in oil and gas leases.¹⁷ Before Quito's license renewal application was denied on February 9, 2023, Quito operated the leases for Kansas Production Company.¹⁸ On February 10, 2023, Scott Goetz formed Thor – where he is the sole officer and owner – for the purpose of operating Kansas Production Company leases formerly operated by Quito.¹⁹

¹⁴ The Commission notes and rejects Horst's closing argument at Tr. 102:11-19.

¹⁵ *See, e.g.*, Pre-Filed Direct and Rebuttal Testimony of McCann, 7:15 to 8:3; 8:17 to 9:1 (Jun. 7, 2024); Pre-Filed Direct and Rebuttal Testimony of Goetz, 8:14 to 10:7, 13:7-14 (Jun. 7, 2024); *see also* Thor's Motion for Summary Judgment (May 10, 2024).

¹⁶ *See, e.g.*, Pre-Filed Direct and Rebuttal Testimony of McCann, 2:1-2; 2:9-11; 6:5-7.

¹⁷ *See id.* at 5:15 to 6:4.

¹⁸ *See, e.g., id.*

¹⁹ *See, e.g.*, Pre-Filed Direct and Rebuttal Testimony of Goetz, 4:13 to 5:3.

11. The connections between McCann and Goetz are deep. For example, Goetz was employed by McCann Field Services between 2020 and 2022; Goetz has also done work for Stellar Field Servies and signed documents on behalf of Quito.²⁰ The connections are deep enough that they confuse even McCann and Goetz: Goetz stated in his July 7, 2024, pre-filed testimony that “McCann Field Services, Inc. is an Oklahoma Corporation; it is my understanding that Mr. McCann is the owner of that corporation,”²¹ while McCann testified at the October hearing that he transferred McCann Field Services to Goetz on May 20, 2023.²²

12. And there is no doubt McCann continues to pull the strings. For example, (1) under the operating agreement between Kansas Production Company and Thor, all costs incurred by Thor are borne by Kansas Production Company;²³ (2) the email sent to the Commission to request that Thor have access to electronic filing came from the office manager of McCann Companies;²⁴ (3) there are multiple text messages showing McCann heavily involved in day-to-day work on specific wells purportedly transferred to Thor;²⁵ and (4) Goetz testified that financial assurance monies required by the Commission related to Thor’s license would come from McCann.²⁶

13. In addition, McCann submitted his pre-filed testimony on behalf of both Quito and Thor. McCann and Goetz also both testified at hearing via Zoom from the same home, and despite Goetz’s denial, the Commission saw McCann communicating with Goetz on multiple occasions while Goetz was testifying.²⁷ Further, attorney Horst represents both Quito and Thor; this would be ethically

²⁰ See, e.g., Pre-Filed Direct and Rebuttal Testimony of McCann, 2:16 to 3:2; Tr. 83:21-23 (Goetz testifying).

²¹ Pre-Filed Direct and Rebuttal Testimony of Goetz, 5:7-13.

²² See Tr. 67:24 to 68:8 (McCann testifying).

²³ See, e.g., Pre-Filed Rebuttal Testimony of Hoffman, at Exhibit RH-1 (Jul. 3, 2024).

²⁴ See, e.g., Pre-Filed Testimony of Klug, at Exhibit DK-1 (May 17, 2024).

²⁵ See, e.g., Pre-Filed Rebuttal Testimony of Hoffman, at Exhibit RH-2.

²⁶ See Tr. 94:18 to 95:2.

²⁷ See Tr. 97:6-11.

problematic if the entities had divergent interests. And Horst drafted the operating agreement between Kansas Production Company and Thor, with McCann and Goetz working with him.²⁸

14. The Commission declines to assess a penalty in this docket against Quito. McCann and Goetz stated that Quito did not operate any wells after the date Quito's license renewal application was denied,²⁹ and that it was Thor operating the wells. The Commission sees no substantive difference between Quito and Thor, and based upon the evidence finds it unnecessary to focus on Quito or to levy separate penalties against both Quito and Thor.

15. The Commission does, however, find it appropriate to assess a \$25,000 penalty against Thor – McCann and Goetz admit Thor was operating wells that were on Quito's expired, revoked license. Staff had not approved the Request for Change of Operator (T-1) forms necessary to move the wells from Quito's license to Thor's, and Thor had not provided acceptable financial assurance instruments to allow such transfer.³⁰ Thor complains it was not notified of the status of the forms or that there was a financial assurance deficiency;³¹ nevertheless, the onus is upon an operator to ensure compliance with Commission regulations before and while operating wells. Although not weighed especially heavily here, it is also worth noting that Staff filed its motion in Docket 24-3001 on July 13, 2023, stating that it did not believe the T- 1 Forms should be processed; Staff found the Sears #30 in operation on July 18, 2023. While Thor says it did not receive the motion, it was validly served; Thor also says it did not receive the validly served Order Designating Presiding Officer and Setting Prehearing Conference in that matter.³²

²⁸ See Tr. 99:2-15.

²⁹ The Commission notes McCann stated at hearing a few of the leases were not shut in until the next morning due to lack of personnel. Tr. 69:12-15.

³⁰ See, e.g., Pre-Filed Testimony of Borst, 4:16 to 5:9 (May 17, 2024).

³¹ See Pre-Filed Direct and Rebuttal Testimony of Goetz, 11:1-6.

³² See, e.g., Docket 24-3001, Supplement to Motion to Vacate Proposed Order (Aug. 15, 2023).

16. Despite all this, Thor argues it committed no wrong-doing because Commission statutes and regulations addressing T-1 transfer forms indicate the processing of such forms is an administrative task, and that the Commission cannot meaningfully review such forms.³³ The Commission disagrees. K.S.A. 55-155(f), K.A.R. 82-3-136, and K.A.R. 82-3-410, for example, merely provide the prior operator with a filing obligation. Indeed, K.A.R. 82-3-136 describes the transferring of responsibility, not the transfer of operational authority, and K.A.R. 82-3-410 speaks of the “intent” to transfer authority. Under K.S.A. 74-623, the Commission has exclusive jurisdiction over all oil and gas matters; statutes and regulations do not obligate the Commission to give a new operator authority to conduct operations on a well just because a prior operator filed something.

17. The Commission also notes that because the wells at issue were on Quito’s inactive license, under K.S.A. 55-179(e) they were “abandoned” wells, and under K.S.A. 55-179(b)(6)(D) Thor’s activities constituted physical operations upon the wells, where such operations were not authorized by the Commission. Even if there were no other regulatory grounds for a penalty in this matter, the Commission finds, given the scope of the operations, that a \$25,000 penalty would be appropriate for Thor’s unauthorized physical operations.

18. Aside from this statutory and regulatory analysis, from a policy perspective, the position of Quito/Thor essentially appears to be that the Commission is powerless to stop McCann from conducting oil and gas operations in Kansas; that shuffling some paperwork allows him to disregard Commission regulations and orders. The policy implications of such a position are horrific – any person could dump well-plugging liabilities upon the State by abandoning those wells under the shell of a defunct corporation and transferring viable wells to a new entity. Any person would be free to ignore Commission orders by getting a non-relative to slap a name on a new corporate entity,

³³ See, e.g., Thor’s Motion of for Summary Judgment, pp. 12-13.

while still retaining full control over that non-relative and the new entity. The Commission and the taxpayers of this State are not statutorily and regulatorily obligated to lose a game of whack-a-mole.

Analysis: Docket 24-3001

19. This is the docket that was initiated in July 2023 to determine whether Thor's license should be revoked and whether various wells should be transferred from Quito's license to Thor's. Commission-issued operating licenses run for an annual term.³⁴ Thor first obtained its license in February 2023, and it expired in February 2024. The record indicates Thor submitted a license renewal application on March 21, 2024.³⁵ Based upon the specific facts before it, the Commission declines to revoke Thor's license; if necessary, the appropriate status of Thor's license can be resolved through the licensing process in another docket.³⁶ As well, the Commission finds the Request for Change of Operator (T-1) forms at issue should not be processed. McCann cannot do through Thor what he cannot do through Quito, Thor did not provide acceptable financial assurance instruments to allow such transfer, and as Thor is not currently licensed, such transfer would be immaterial, and inappropriate under K.A.R. 82-3-136(c).³⁷

THEREFORE, THE COMMISSION ORDERS:

- A. Thor's May 10, 2024, motion for summary judgment is denied.
- B. Regarding Docket 24-3001, Thor's license shall not be revoked, and the wells at issue shall not be transferred.

³⁴ See, e.g., K.S.A. 55-155; K.A.R. 82-3-120.

³⁵ See, e.g., Tr. 61:2-12 (Borst testifying); the Commission also takes administrative notice of its records. See K.A.R. 82-1-230(h).

³⁶ Thor argued there was no legal basis to revoke its license. See, e.g., Thor's Motion for Summary Judgement, p. 16.

³⁷ Under K.A.R. 82-3-136(c), transfers cannot be made to entities not currently licensed.

C. Regarding Docket 24-3072, the Penalty Order against Quito is affirmed. Quito shall pay the \$500 penalty within 30 days, and the 30 and 60-day deadlines in ordering clauses C and D of the Penalty Order shall run from the date this Final Order is issued.


D. Regarding Docket 24-3086, Thor is assessed a \$25,000 penalty. If Thor does not pay within 30 days, then Thor's license shall be suspended without further notice, and shall remain suspended until Thor complies, and Staff may seal any wells on Thor's license until Thor complies.

E. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).³⁸

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner (recused); Kuether, Commissioner

Dated: 11/21/2024



Lynn M. Retz
Secretary to the Commission

Mailed Date: 11/21/2024
JRM

³⁸ K.S.A. 55-162; K.S.A. 55-606; K.S.A. 55-707; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

24-CONS-3001-CSHO, 24-CONS-3072-CPEN, 24-CONS-3086-CMSC

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 11/21/2024.

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