

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

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

**REPLY TO RESPONSE OF COMMISSION STAFF TO
MOTION OF THOR OPERATING, LLC FOR SUMMARY JUDGMENT**

Comes now Thor Operating, LLC (hereafter "Thor"), and for its Reply to the Response of Staff of the Kansas Corporation Commission ("Staff") respectfully submits to the Commission that Thor's Motion for Summary Judgment should be sustained, for the reasons previously set forth in the Motion and in this Reply.

Thor's General Reply

1. Thor concurs with Staff's authority concerning standards governing summary judgment. Additionally, Thor recognizes that its Statement of Uncontroverted

Facts, and the factual issues which Staff raises are not binding on the Commission. However, the disputed fact issues which Staff raises do not controvert the central and basic facts of this case which establish that Thor is entitled under the provisions of K.S.A. 55-155 to continue to hold and maintain the operator's license previously issued to it. Additionally, the wells on the eight (8) leases previously transferred by Quito, Inc. (hereafter "Quito") to Thor should be transferred onto Thor's operator's license, there being no basis under the express provisions of K.S.A. 55-155(f), K.A.R. 82-3-136 or K.A.R. 82-3-410 to administratively decline to recognize the prior transfers.

2. Thor does not dispute the general propositions set forth in paragraph 2 of Staff's Reply.

Docket No. 24-CONS-3001-CSHO

3. That the owner of a working interest has the legal authority to control the work involved in the exploration for and production of oil and gas under the terms of a conventional oil and gas lease seems so fundamental that Thor sees no need to lengthen its reply by citing that case law. An equally fundamental concept is that the holder of the working interest has an implied duty to operate as a reasonably prudent operator. A reasonably prudent operator recognizes his duty to comply with the statutes, rules, regulations and orders of duly constituted governmental agencies relative to the exploration for, development, and operation of production of oil and gas. Indeed, compliance with such provisions is an integral factor in determining whether

oil and gas is produced in paying quantities. Wrestler v. Colt, 7 Kan. App. 2d 553, 559, 644 P.2d 1342, 1347 (1982).

Staff speculates that Thor will be unable to comply with the statutes, rules and regulations. The factual basis of Staff's dim view of Thor's ability to comply appears to be based not upon the violation of any statute, rule, regulation or order of the Commission by Thor, but instead upon: (1) Staff's assertion that lease inspection reports conducted in March, 2022 on these and other leases operated by Quito recommended that Quito be issued Notices of Violation for a variety of regulatory violations, the majority of which involved asserted failure to comply with temporary abandonment regulations, although to date, none of the asserted specific violations have ever resulted in the issuance of even a Notice of Violation letter, much less any Penalty Orders; (2) the Commission's Final Order of February 9, 2023, that Quito was not in compliance in Docket No. 22-CONS-3115-CMSC, and that its application for license renewal should be denied; (3) the perceived subordinate position of Thor and Scott Goetz (hereafter "Goetz") to Kansas Production Company, Inc. (hereafter "KPI"), the owner of the working interest in the various oil and gas leases at issue, and (4) the involvement of the common denominator - Mark W. McCann (hereafter "McCann"), the sole shareholder and owner of both Quito and KPI.

4. Thor does not dispute the general proposition that the Commission has authority to regulate the industry; that the authority is broad; that the authority includes

licensing of operators, and to approve or deny forms. However, as noted in Thor's original Motion, the authority is not limitless, and it must be exercised within the scope of the enabling legislation conferring that authority.

5. Notably, paragraph 5 of Staff's Reply does not dispute that Thor and Goetz each fully comply with all of the four subparts of K.S.A. 55-155(c)(4). The last two sentences of that paragraph then get to the heart of this matter. Staff's concern over Mr. McCann's ability to control Thor via his ownership of KPI. However, whether or not a working interest owner has a legal right to control the actions of an operator of an oil and gas lease is not a factor under K.S.A. 55-155(c)(4) that bears upon the operator's eligibility for a license. Furthermore, the concern, whether real or imagined, involves the exercise of discretion by Staff to assess the extent of any perceived threat that the operator's ability to comply with the statutes, rules, regulations and orders of the Commission will be compromised by virtue of the existence of such legal control. Not only is the exercise of such authority beyond the enabling legislation; there exist no reasonable and defined standards which govern Staff's exercise of discretion in circumstances analogous to these.

6. The Commission licenses operators, and exercises the enforcement of the statutes, rules, regulations and orders relating to the oil and gas industry largely through such licensing authority. However, Courts of general jurisdiction exercise authority over the rights, duties, liabilities, and obligations arising under private

contracts between parties. The apparent purpose of Staff's comments regarding the operating agreements is to illustrate the extent to which the holder of the working interest may exercise control over the operator. However, nothing in the operating agreements suggests that Thor should not or will not comply with the Commission's authority, follow the governing statutes, and the Commission's rules, regulations and orders in operating each of the wells on each of the leases transferred to Thor.

Finally, there is nothing in K.S.A. 55-155 which suggests that the statute has any bearing upon lease ownership or prevents a non-operating working interest holder.

7. Nothing in the text messages suggests or implies that Mr. McCann was directing Mr. Goetz to ignore regulatory compliance issues. Nothing in the applicable statutes or regulations prevent or prohibit the operator from communicating with the working interest owner, cooperating with the working interest owner, or even following the directions of the working interest owner in regard to operation of the wells and leases.

8. The Zale Jewelry¹ case involved the issue of whether a corporation (Zale) was involved in the practice of optometry, as corporations were at that time prohibited from doing so. In finding that the optometrist was effectively an employee of Zale, the Court examined the relationship that the corporation and the optometrist had established through various means, including the commercial lease agreement which

¹ State ex rel. Fatzer v. Zale Jewelry Co. of Wichita, 179 Kan. 629 (1956).

the parties entered into. The difficulty with this asserted factual dispute is that K.S.A. 55-155 does not prohibit a principal-agent relationship between the working interest owner and the licensed operator, so even were that arguably the case here, Thor would be eligible for a license. Additionally, there are no defined standards under the licensing statute by which to determine what degree of asserted control is prohibited, so not only would the Commission have to act beyond the legislative authority granted, it would also have to fix standards measuring what amount of control is prohibited, which the statute also does not define.

9. Staff's argument that K.S.A. 55-155 establishes a floor, not a ceiling in determining what criteria an applicant for an operator's license must meet not only appears contrary to established case law, which when applied to licensing statutes, supports the proposition that statutes which impose no special qualifications upon the applicant in terms of education, training, experience, or ability are to be treated as an entitlement; it proposes a power that the Commission should be hesitant to suggest exists - that the agency can create additional unenumerated criteria not expressly set forth in the licensing statute beyond that which the legislature has provided.

10. Staff attributes nefarious motives to the transfer of wells from Quito to Thor, but it is difficult to understand Staff's logic in this argument. Staff appears to be taking the position that regulatory compliance is best achieved by leaving the wells idle on the expired license of Quito, as opposed to transfer of the wells to a licensed

operator. Common sense suggests that a currently active licensee would have the ability and incentive to comply with rules and regulations so that the wells can continue to operate and produce income, which is obviously required to pay costs associated with regulatory compliance, as opposed to leaving the wells on the inactive license of the past operator, who, without the ability to operate and produce income, has much less incentive or economic ability to comply with the existing regulatory regimen.

11. Staff suggests that the transfers involve "cherry-picking". Thor submits that Mr. Goetz, for the operator, and Mr. McCann for the working interest owner, attempted to employ a conservative approach in selecting which wells to transfer designed to minimize Thor's exposure to regulatory compliance issues. Additionally, Quito has applied for issuance of a new license, as the one year period of suspension of its prior license has now expired, and Quito desires to transfer the balance of the wells onto its new license. Unfortunately, those efforts to date have not borne much fruit. Neither the express or implied provisions of K.S.A. 55-155(f), K.A.R. 82-3-136 or K.A.R. 82-3-410 impose any limitations, restrictions or standards which specify that an operator must transfer **all** wells on its lease to a new operator, or direct that the new operator must accept **all** of the wells on the lease listed on the past operator's license.

This argument flies in the face of K.S.A. 55-179(b)(3) and (4) addressing responsibility for the proper care and control of a well, including plugging. The pertinent language of (b)(3) is:

"signing an agreement or any other written document between private parties shall not in and of itself create responsibility for a well located upon the land covered thereby unless such instrument adequately identifies the well and expressly transfers responsibility for such well;"

The language of (b)(4) to identify the responsible party is:

"The operator that most recently filed a completed report of transfer with the commission in which such operator accepted responsibility for the well.... Any modification made by commission staff of any such documents shall not alter legal responsibility unless the operator was informed of such modification and approved of the modification in writing".

The present case presents eight operating agreements entered into between private parties specifically identifying the wells for which Thor agreed to accept responsibility. To date, Staff has not identified any additional wells on those eight leases that it desires Thor to accept responsibility for.

12. As noted above, Staff's position on Thor's operation of the Sears #30 well on July 18, 2023 is contrary to the express provisions of K.S.A. 55-179(b)(4). As to compliance issues on other wells transferred to Thor, the present proceedings effectively prevent Thor from addressing any such issues, and given the current administrative impasse, its ability to achieve compliance is compromised. Docket No. 24-3086 is a direct result of the impasse. Bootstrapping the asserted violation in 24-3086, which arose subsequent to issuance of Thor's operator's license and the filing of a transfer of the Sears #30 well as a fact dispute bearing upon Thor's eligibility to obtain and maintain an operator's license places the cart squarely in front of the horse.

It provides no grounds for denial of Thor's Motion.

13. In conclusion, it is true that Thor and Staff disagree on certain facts, but those disagreements relate to disputes that are outside of the scope of K.S.A. 55-155.

A fair and reasonable construction of the licensing statute establishes Thor's eligibility to obtain and maintain its license. Concerns about the arms-length nature of the transaction, Mr. McCann's ability to exercise control over Thor, or Thor's ability to comply are beyond the regulatory authority presently conferred by the legislature upon the Commission. If the legislature desires to broaden the authority of the Commission under the licensing statute, it presumably has the authority to enact reasonably defined standards under which one might presume the current fact pattern would fall, but until it does, the Commission should be guided by the current statute which is in effect.

Docket No. 24-CONS-3086-CMSC

14. Thor does not dispute the issuance of the Shut-In and Show Cause Order. It is the factual and legal basis of that Order that is in dispute.

15. Thor's Motion for Summary Judgment was filed on May 10, 2024. Thor was first advised of Staff's assertion that the Letter of Credit submitted by Thor to provide assurance of financial responsibility was defective on May 17, 2024, when it received the Pre-Filed Testimony of Nancy Borst. From the date Thor first submitted its Letter of Credit, slightly over one year had passed. The posting of a Letter of Credit is one of the alternative methods by which an operator may establish financial

responsibility. This defect is easily curable, and Thor will be forwarding its cashier's check to the Commission in the amount of \$1,800.00 to confirm financial responsibility shortly. No other defect or error has been raised by Staff that relates to the forms, including the T-1 forms, submitted by Thor.

K.A.R. 82-3-136 requires the past operator to identify the effective date of transfer on the T-1 form. Each of the eight T-1s from Quito to Thor identified effective dates of transfer predating the file of Staff's Motion in Docket 24-3001 on July 3, 2023. The Motion in that docket was not based on any asserted defect in the T-1 forms. The grounds upon which Staff asserted that the wells should not be transferred to Thor was the business relationship of Mr. Goetz and Mr. McCann.

15. Attached as Exhibit Thor-1 are the instructions provided to operators for completion of the T-1 form. Those instructions do not notify the new operator that Staff approval of the transfer is a necessary prerequisite to the new operator engaging in operation of the wells on the leases.

16. As noted above, notice of defects in the Letter of Credit was not given to Thor in a timely manner, as the Commission has directed². This asserted factual issue is collateral to the fundamental legal and factual issue presented, and does not preclude entry of summary judgment on the premise of Thor's basic case - that it is

² Docket No. 23-CONS-3345-CPEN; Final Order para. 11.

entitled to receive and renew an operator's license and, subject to satisfaction of other statutory requirements, including the furnishing of satisfactory financial assurance, it is also entitled to acceptance of the wells on the leases transferred to it by Quito.

17. In concluding its Reply, Thor submits that resolution of the basic factual and legal issue presented will aid both Thor and the Commission in any further proceedings conducted under the two dockets above. Thor respectfully submits this is not a matter where equity jurisdiction exists, as the powers of the Commission and Staff are circumscribed by the powers and authority conferred upon it by the legislature. Thor's Motion for Summary Judgment should be granted.

SUBMITTED BY:

JOHN R. HORST, P.A.

By /s/ John R. Horst

JOHN R. HORST

207 W. Fourth Ave.

P.O. Box 560

Caney, KS 67333

Attorney for Thor Operating, LLC

File #3133.1

S.Ct. #09412

REQUEST FOR CHANGE OF OPERATOR TRANSFER OF INJECTION OR SURFACE PIT (FORM T-1) *Instructions*

General Instructions.

1. Form must be typed.
2. Form must be signed.
3. All applicable blanks must be completed.
4. Form must be submitted with a completed Form KSONA-1.

Section 1:

- 1a. **Oil Lease.** Check this box if the lease contains oil wells, and enter the number of oil wells in the blank to the right of the box. If the lease contains oil wells, you must complete the information for each well on Side Two of this form.
- 1b. **Gas Lease.** Check this box if the lease contains gas wells, and enter the number of gas wells in the blank to the right of the box. If the lease contains gas wells, you must complete the information for each well on Side Two of this form.
- 1c. **Gas Gathering System.** Check this box if you are transferring a gas gathering system. A starting location—section, township, and range—must be entered as described in 2d.
- 1d. **Saltwater Disposal Well.** Check this box if the lease contains a saltwater disposal well, and list the permit number in the blank to the right of the box. Permit numbers can be obtained by contacting the KCC Underground Injection Control Department, at (316) 337-6200. For the spot location, identify the location of the well by filling in the distance from the North or South section line and the East or West section line.
- 1e. **Enhanced Recovery Project Permit No.** Check this box if the lease contains an enhanced recovery project, and list the permit number in the blank to the right of the box. Permit numbers can be obtained by contacting the KCC Underground Injection Control Department, at (316) 337-6200. Check the appropriate box to indicate whether this transfer includes all of the project's injection wells, and fill in the number of injection wells in the space provided. If the lease does contain injection wells, you must complete the information for each well on Side Two of this form.
- 1f. **Field Name.** List the name of the field from which the wells are producing. Field names are available on the KGS website at <http://www.kgs.ku.edu/Magellan/Field/index.html>.

Section 2:

- 2a. **Effective Date of Transfer.** Enter the date that the lease will be transferred.
- 2b. **Dept of Revenue Lease No.** List the Kansas Department of Revenue (KDOR) lease number in the space provided. You can obtain the lease number directly from KDOR or from the Kansas Geological Survey website at <http://www.kgs.ku.edu/Magellan/Field/lease.html>.
- 2c. **Lease Name.** Fill in the name of the lease. If the lease name has changed, please indicate the change similarly to the following example: "Smith (formally known as Johnson)."
- 2d. **Enter the quarter calls.** (¼ ¼ ¼ ¼), and the Section, Township, and Range, indicating whether the Range is East or West of the Sixth Principal Meridian (e.g., Sec. 7, Twp. 9, R. 5 E).
- 2e. **Legal Description of Lease.** Enter the complete legal description of the lease. The acreage that the lease covers is recorded on the Oil and Gas Lease or the Assignment of Oil and Gas Lease (e.g., N/2 of 07-09S-05E). Attach additional sheets of paper if necessary.
- 2f. **County.** List the county in which the lease is located.
- 2g. **Production Zone(s).** the production zone or zones for the wells on this lease.
- 2h. **Injection Zone(s).** List the injection zone or zones for the wells on this lease.

Section 3:

- 3a. **Surface Pit Permit No.** List the surface pit permit number in the blank, and identify the location of the pit by filling in the distance

from the North or South section line and the East or West section line. If the pit permit number is unknown, please contact the KCC Environmental Protection and Remediation Department, at (316) 337-6200.

- 3b. **Type of Pit.** Check the appropriate box to identify the type of surface pit. See K.A.R. 82-3-101(a)(52) for definitions of pit types. KCC Rules and Regulations can be accessed on the KCC website at <http://kcc.ks.gov>.

Section 4:

- 4a. **Past Operator's License No.** Enter the license number of the operator that is transferring the subject wells, pits, or injection authority. To verify the operator's license information, contact the Licensing Department at (316) 337-6200.
- 4b. **Past Operator's Name and Address.** in the former operator's full name and mailing address.
- 4c. **Title.** Fill in the title of the signer with respect to the former operator, if applicable.
- 4d. **Contact Person.** Enter the name of the contact person for the former operator. This may or may not be the same person as the former operator.
- 4e. **Phone.** Enter the telephone number of the contact person for the former operator.
- 4f. **Date and Signature:** This section must be signed and dated by an authorized signer for the former operator. If a signature is unavailable, the new operator must provide legal documentation demonstrating lease ownership or the right to operate the lease. For example, if the past operator is deceased, attach a copy of the death certificate along with the legal documentation indicating the new operator has the right to operate the lease; if the company is no longer in business, attach a copy of the lease assignment, bill of sale, or other legal documentation indicating the new operator has the right to operate the lease.

Section 5:

- 5a. **Operator's License No.** Enter the license number of the operator to whom the subject wells, pits, or injection authority is being transferred. To verify operator license information, contact the Licensing Department at (316) 337-6200.
- 5b. **Operator's Name and Address.** Enter the new operator's full name and mailing address.
- 5c. **Title.** Enter the title of the signer with respect to the new operator, if applicable.
- 5d. **Contact Person.** Enter the name of contact person for the new operator. This may or may not be the same person as the new operator.
- 5e. **Phone.** Enter the phone number of the contact person for the new operator.
- 5f. **Oil / Gas Purchaser.** Enter the name of the individual or entity that will be purchasing the oil or gas from this lease.
- 5g. **Date and Signature.** This section must be signed and dated by an authorized signer for the new operator. The new operator must have a current, valid Kansas Operator's License and sufficient financial assurance to cover the wells on the lease being transferred.

Side Two:

Fill in the blanks provided to indicate the KDOR lease number (same as 2b from Side One), lease name (same as 2c from Side One), and lease location (same as 2d from Side One). If you are transferring a unit that consists of more than one lease, please file a separate "Side Two" for each lease. If a lease covers more than one section, please indicate which section each well is located.

For each unplugged well (oil, gas, injection, cathodic borehole, gas storage, etc.), list ALL of the following:

1. **Well number.** List the well number. If the well number has been changed from the original number associated with this well, please list the new well number, followed by the old number in parentheses (e.g. 1 (32), where "1" is the new well number and "32" was the original well number associated with this well). Note that the operator determines the well number when the wells are initially permitted.
2. **API No.** All wells drilled in 1967 or later must list the API Number assigned to the well. Wells drilled prior to 1967 must indicate the year the well was drilled. If the exact year drilled is not known, enter the following: "Drilled prior to 1967, year unknown." API numbers are available from the KCC library, (316) 337-6200, or on the KGS online database, at <http://www.kgs.ku.edu/Magellan/Qualified/index.html>.
3. **Footage from Section Line.** All footages must be calculated from the section line. Circle the appropriate direction to indicate which section lines were used.
4. **Type of Well.** List the well type (oil, gas, injection, WSW (water supply well), CB (cathodic borehole), CM (coal bed methane), GS (gas storage).
5. **Well Status:** List whether the well is still producing (PROD), active (ACT), approved temporarily abandoned (TA'D), Declaratory Order Well (DC), or not producing or not being injected/disposed into (Inactive).

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true copy of the attached Reply to Response of Commission Staff to Motion of Thor Operating, LLC for Summary Judgment has been served to the following by means of electronic service on July 12, 2024.

Kelcey Marsh, Litigation Counsel
Kansas Corporation Commission
Central Office
266 N. Main St, Ste 220
Wichita, KS 67202-1513
Fax: 785-271-3354
k.marsh@kcc.ks.gov

Jonathan R. Myers, Asst. General Counsel
Kansas Corporation Commission
266 N. Main St., Ste. 220
Wichita, KS 67202-1513
Fax: 316-337-6211
j.myers@kcc.ks.gov

Nancy Borst
Kansas Corporation Commission
266 N. Main St., Ste. 220
Wichita, KS 67202-1513
n.borst@kcc.ks.gov

Troy Russell
Kansas Corporation Commission
District Office No. 3
137 E. 21st Street
Chanute, KS 66720
t.russell@kcc.ks.gov

Ryan Duling
Kansas Corporation Commission
District Office No. 3
137 E. 21st Street
Chanute, KS 66720
r.duling@kcc.ks.gov

/s/ John R. Horst

JOHN R. HORST