

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

In the matter of the request to transfer wells from) Docket No. 25-CONS-3236-CMSC
Quito, Inc. to Emerson Operating, LLC.)
) CONSERVATION DIVISION
)
) License No. 33594 & 36165
_____)

POST-HEARING RESPONSE BRIEF OF COMMISSION STAFF

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively) submits its Post-Hearing Response Brief (Response Brief), to the briefs submitted on behalf of Emerson Operating, LLC (Emerson) and Quito, Inc. (Quito) on August 20, 2025. In support of its Response Brief, Staff states the following:

In the brief submitted on behalf of Quito, Quito argues that there is no basis to oppose the transfer of the wells on the three Request for Change of Operator (T-1) forms at issue in this docket when evaluating the forms within the scope of the existing statutory and regulatory framework the Commission must operate within. The brief submitted by Emerson simply states that it incorporates Quito's arguments and fails to provide any other substantial argument. The evidence in this matter clearly shows that the transaction between Quito and Emerson is not an arms-length transaction. Staff Response Brief will discuss why it is within the Commission's scope and best interest to deny the T-1 forms between Quito and Emerson and why Emerson has not taken all of the appropriate steps to accept the transfer of wells from Quito.

A. It is within the Commission's scope to deny T-1 forms at issue in this matter.

Under K.S.A. 74-623, the Commission has exclusive jurisdiction and authority to regulate oil and gas activities. The Commission has previously determined that it has broad authority under K.S.A. 74-623, K.S.A. 55-604, and K.S.A. 55-704 to approve or deny forms submitted by

operators.¹ This includes T-1 forms. Quito's Brief also acknowledges that the Commission has previously made this determination.² Quito's Brief makes the argument that the basis for Staff's opposition to the transfer of wells from Quito to Emerson is not a factual or legal basis to oppose the transfer.³ However, the evidence before the Commission clearly indicates that this is not a legitimate transfer made at arms-length between two companies. It is an attempt to circumvent the Commission's rules and regulations and for all intents and purposes not a transfer at all because of Emerson's reliance on Mr. McCann's direction, equipment, finances, and other resources.

When discussing the factual basis of Staff's opposition to transfer, Quito's brief first discusses Mr. McCann's involvement in the decision-making process concerning the operation of the leases and wells.⁴ In his testimony and at hearing Mr. McCann openly acknowledged that he anticipated giving Emerson direction regarding how these leases are operated and expected Emerson to request such direction.⁵ Quito's brief also states that the notion that Emerson should operate the leases and wells free of any input, comment, suggestion or recommendation from Mr. McCann is derogation of the legitimate rights arising from his ownership of the leases.⁶ This position that has been taken by Quito is essentially that the Commission is powerless to stop Mr. McCann from conducting oil and gas operations in Kansas, as long as he has someone who is willing to operate on his behalf. If this were true, Mr. McCann would essentially be able to use his proxy to operate his leases while ignoring the Commission regulations and orders which currently prevent him from operating these wells under his own license.

¹ See KCC Docket 23-CONS-3109-CPEN, *Final Order*, ¶30 (Oct. 3, 2023).

² Brief of Quito, Inc., p. 3 (Aug. 20, 2025).

³ *Id.* at p. 11.

⁴ *Id.* at p. 11.

⁵ Evidentiary Hearing Transcript, p. 63:12-64:5 (July 29, 2025); see also Pre-Filed Direct and Rebuttal Testimony of Mark W. McCann, p. 7:17-8:15 (May 2, 2025).

⁶ Quito's Brief at p. 11.

Quito's brief also acknowledges Emerson's financial dependence on Mr. McCann. Quito's brief argues that Mr. Harper testified that Emerson has the independent financial ability to comply with the statutory and regulatory requirements associated with operating the wells and leases being transferred.⁷ Staff is dubious of such an assertion. At the hearing, Mr. Harper acknowledged that the last bank record provided to Commission Staff indicates that Emerson had -\$24.63 at its disposal.⁸ Quito's brief and the operating agreement indicate that Emerson's costs will be promptly reimbursed by Mr. McCann's companies. However, Mr. Harper himself stated that he was concerned and has had issues receiving payment from Mr. McCann.⁹

Quito's brief attempts to establish a distinction between Mr. McCann's companies and Emerson based on their corporate structure.¹⁰ However, Mr. Harper testified that Emerson was formed at Mr. McCann's request and that the company would never have been formed if Mr. McCann had not approached Mr. Harper.¹¹ Additionally, Mr. Harper testified that Emerson was formed to operate select leases identified by Mr. McCann and Mr. Horst.¹² Mr. Harper also testified that Mr. McCann would provide equipment such as nitrogen bottles to conduct mechanical integrity tests on the lease and would offer to send his guys to help Mr. Harper work on wells.¹³ Further, there are indications that Mr. McCann and Mr. Horst identified Ms. Aspan to be the attorney for Emerson, and Mr. McCann even directed Mr. Harper to call that Ms. Aspan.¹⁴ On top of that, Mr. Harper testified that it was his understanding that Mr. McCann would be paying for his attorney's fees in this matter.¹⁵ While Mr. McCann and Mr. Horst may have organized there

⁷ *Id.* at p. 13-14.

⁸ *See* Exhibit KCC Staff 4.

⁹ Transcript at p. 84:4-85:17.

¹⁰ Quito's Brief at p. 16-17.

¹¹ Transcript at p. 89:11-90:1.

¹² *Id.* at p. 92:7-16.

¹³ *Id.* at p. 95:2-25.

¹⁴ *Id.* at p. 91:2-24.

¹⁵ *Id.* at p. 103:25-104:25.

to be two entities in this matter, there is no distinction when Emerson was formed at Mr. McCann's direction and is still subject to Mr. McCann's direction, when Emerson is solely reliant on Mr. McCann's funds both to operate and be represented, and when Emerson has utilized equipment and manpower provided by Mr. McCann.

Lastly, Quito's brief also references the prior transfer between Quito and Thor Operating, LLC which went before the Commission in Docket 24-CONS-3001-CSHO.¹⁶ In that matter the Commission correctly determined that the T-1 forms between Quito and Thor should not be processed.¹⁷ The Commission determined that Mr. McCann could not do through Thor what he cannot do through Quito, that Thor did not provide acceptable financial assurance instruments to allow such transfer.¹⁸ Here, Mr. McCann is effectively taking another bite at the apple by attempting to do through Emerson what he cannot do through Quito. Quito's brief fails to describe how the T-1 forms and operating agreement between Quito and Emerson are any different from the T-1 forms and operating agreement between Quito and Thor. Therefore, both T-1 forms should be treated in the same manner and be denied by the Commission.

B. Emerson has not taken all necessary steps to accept the transfer of wells.

Quito's brief alleges that Emerson is qualified to accept the transfer of three of Quito's leases to its license because Emerson was given a license and complied with the financial responsibility provisions under K.S.A. 55-155(d).¹⁹ However, Staff disagrees as Emerson has not provided sufficient financial assurance to accept the wells from Quito. Under K.S.A. 55-155(d) in order to assure financial responsibility, each operator shall annually demonstrate compliance by providing one of six listed provisions as a means of financial assurance. Quito's brief states that

¹⁶ Quito's Brief at p. 16-17.

¹⁷ Docket 24-CONS-3001-CSHO et. al. Final Order at ¶19 (Nov. 21, 2024).

¹⁸ *Id.*

¹⁹ Quito's Brief at p. 6-7.

under the applicable statutes and regulations, so long as the new operator has provided sufficient evidence of financial responsibility pursuant to K.S.A. 55-155(d), the new operator's financial ability to comply with the statutes, rules and regulations is not a factor expressly, or by reasonable implication, identified as a bearing upon transfer of operatorship from the old operator to the new operator.²⁰ However, in the present matter Emerson has not provided such evidence of financial responsibility to allow the transfer of wells from Quito to its license.

It appears that the method of financial assurance provided for the wells at issue in this matter attempts to fall under K.S.A. 55-155(d)(4), which requires the operator to pay a nonrefundable fee equal to 6% of the amount of the bond or letter of credit that would be required by subsection (d)(2). Under 55-155(d)(2) if an operator has obtained a blanket performance bond or letter of credit then it must be for an amount based upon the number and depth of active, inactive, injection, or disposal wells for which the operator is responsible. If an operator is responsible for wells less than 2,000 feet in depth, then the performance bond or letter of credit must be \$7,500 for 1 through 5 wells; \$15,000 for 6 through 25 wells; and \$30,000 for over 25 wells. Additionally, if an operator is responsible for wells greater than 2,000 feet in depth then the performance bond or letter of credit must be \$15,000 for 1 through 5 wells; \$30,000 for 6 through 25 wells; and \$45,000 for over 25 wells.

First, Emerson as the proposed new operator has not provided sufficient evidence of financial responsibility because the bank records entered into evidence clearly show Mr. McCann is the one who provided Emerson's financial assurance.²¹ Additionally, during cross examination Mr. Harper acknowledged that the \$1,800 of financial assurance received by Staff came from Mr.

²⁰ Quito's Brief at p. 13.

²¹ See Exhibit RH-4 and Exhibit NB-2.

McCann.²² Emerson as the operator should be providing its own financial assurance, not the person who is attempting to operate through Emerson. Second, the amount of financial assurance provided by Mr. McCann is not sufficient to transfer the wells listed on the Dearmond, McFarland-Delong, and Sears leases from Quito to Emerson. Here, there are 28 wells listed on the T-1 form for the Dearmond lease, 10 wells listed on the T-1 form for the McFarland-Delong lease, and 24 wells listed in the T-1 form for the Sears lease. Commission records indicate that at least 25 of the wells listed on these forms are less than 2,000 feet in depth, and that 4 of the wells are greater than 2,000 feet in depth. This means that Emerson needs to provide a performance bond or letter of credit in the amount of \$45,000 or a nonrefundable fee equal to 6% of the amount of the bond or letter of credit that would be required by subsection (d)(2) in the amount of \$2,700 in financial assurance before the wells could be transferred to its license.

WHEREFORE, for the reasons described above, Staff respectfully requests the Commission deny the T-1 forms between Quito and Emerson for the reasons described in Staff's Response Brief above and for any other relief the Commission determines to be just and equitable.

Respectfully Submitted,

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²² Transcript at p. 92:23-93:25.

CERTIFICATE OF SERVICE

25-CONS-3236-CMSC

I, the undersigned, certify that a true and correct copy of the attached Response has been served to the following by means of electronic service on September 3, 2025.

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