

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

In the matter of the Application of Quito, Inc.) Docket No.: 25-CONS-3245-CMSC
(Applicant) for an Operator's License.)
) CONSERVATION DIVISION
)
) License No.: N/A

MOTION FOR SUMMARY JUDGMENT

Staff of the Kansas Corporation Commission (Staff and Commission, respectively) hereby moves the Commission to enter summary judgment against Applicant in this matter. In support of its motion, Staff states the following:

I. STATEMENT OF FACTS

1. On September 2, 2021, the Commission issued an Order denying an application for an operator's license renewal submitted by Quito, Inc., License No. 33594, in Docket 22-CONS-3115-CMSC (Docket 22-3115). Quito, Inc. submitted a Request for Hearing in Docket 22-3115 regarding the Commission's Order. On February 9, 2023, the Commission issued a Final Order in Docket 22-3115. The Commission in its Final Order determined that Quito, Inc. had not satisfactorily demonstrated compliance with all Commission regulations and affirmed its Order Denying Application for License renewal.¹

2. Quito Inc.'s license is currently suspended in six separate dockets. Those dockets include Docket 24-CONS-3072-CPEN, 25-CONS-3092-CPEN, 25-CONS-3168-CPEN, 25-CONS-3200-CPEN, 25-CONS-3230-CPEN, and 25-CONS-3267-CPEN.²

3. On May 6, 2024, Quito LLC submitted an application to be licensed by the KCC. Upon receipt of the application, Staff noted several issues that would need to be addressed before

¹ Docket 22-CONS-3115-CMSC, *Final Order*, ¶9 and Ordering Clause A (Feb. 9, 2023).

² Commission Staff requests the Commission take administrative notice of its records. *See* K.A.R. 82-1-230(h).

Staff could issue a license. Specifically, Quito LLC was not registered with the Kansas Secretary of State. Additionally, Quito LLC's partner and/or officer Mr. Mark McCann has a substantial relationship with Mc C Oil Company, Inc., License #31411, Wildcat Energy, Inc., License #31507; and Quito, Inc., License #33594. Mr. McCann is substantially related to Quito, Inc., License #33594 because he was the sole partner or officer of that company which has multiple suspensions for noncompliance with Commission Orders or enforcement agreements. Mr. McCann is substantially related to Mc C Oil Company, Inc., License #31411 because he is listed as a partner or officer of that company which is suspended for noncompliance with a Commission Order or enforcement agreement. He is also a spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of another partner or officer of Mc C Oil Company, Inc. Mr. McCann is substantially related to Wildcat Energy, Inc. which is suspended for noncompliance with a Commission Order or enforcement agreement as a spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of a partner or officer of that company. Additionally, in Dockets 24-CONS-3001-CSHO, 24-CONS-3072-CPEN, and 24-CONS-3086-CMSC, the Commission found there to essentially be a non-existent difference between Mr. McCann's Quito, Inc. and Thor Operating, LLC.³

4. On August 29, 2024, Commission Staff filed a motion in Docket 25-CONS-3082-CMSC (Docket 25-3082) requesting the designation of a presiding officer and request for hearing since the issues referenced in Staff's letter had not been addressed.⁴ Quito LLC failed to attend the prehearing conference resulting in the Presiding Officer issuing a Proposed Default Order on

³ Dockets 24-CONS-3001-CSHO, 24-CONS-3072-CPEN, and 24-CONS-3086-CMSC, *Final Order*, ¶¶10-14 (Nov. 21, 2024).

⁴ Docket 25-CONS-3082-CMSC, *Motion for the Designation of a Presiding Officer and Request for Hearing* (Aug. 29, 2024).

September 27, 2024. On October 3, 2024, a reply to the order was filed, but the reply did not request the Proposed Default Order be vacated and Docket 25-3082 was closed.

5. On October 21, 2024, Applicant submitted an application to be licensed by the KCC. The application indicates that Mr. McCann will be the president of Applicant, that Applicant is not registered with the federal securities and exchange commission, and that Applicant does not have any outstanding monetary penalties or compliance owed to the Commission or was currently paying a monthly installment plan.⁵ On January 28, 2025, the Commission issued an Order Denying Application for License in the captioned matter regarding Applicant's application for an operator's license. The application was denied because Applicant appeared to be substantially related to several entities suspended for non-compliance with the Commission's rules and regulations.⁶ As stated above, Quito, Inc. is currently suspended in multiple dockets. Additionally, Mc C Oil Company, Inc. is suspended for noncompliance with Docket 16-CONS-361-CSHO; Wildcat Energy, Inc. is suspended for noncompliance with Docket 24-CONS-3074-CPEN; and Thor Operating, LLC is suspended for noncompliance with Docket 24-CONS-3086-CMSC.

II. STANDARD OF PROOF FOR SUMMARY JUDGMENT

6. The Commission has authority to rule on motions for summary judgment under K.S.A. 55-162 and K.S.A. 55-164. The Commission has consistently applied the standards of the Kansas Rules of Civil Procedure⁷ when considering and ruling on such motions.

7. Pursuant to K.S.A. 60-256(c)(2), summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as

⁵ Exhibit A.

⁶ Docket 25-CONS-3245-CPEN, Penalty Order, ¶6 (Jan. 28, 2025).

⁷ K.S.A. 60-101, *et seq.*

a matter of law.” Thus, the Commission should render summary judgment if: 1) There is no genuine issue as to any material fact, and 2) Movant is entitled to judgment as a matter of law.

8. The Kansas Supreme Court has written that when ruling on a motion for summary judgment, “[t]he trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case.”⁸

III. ARGUMENT

A. There is No Genuine Issue as to Any Material Fact.

9. There is no genuine issue or question that Quito, Inc.; Mc C Oil Company; Wildcat Energy, Inc.; and Thor Operating, LLC (Associated Entities) are suspended for noncompliance with the Commission’s Orders in the dockets referenced above. Additionally, there is no genuine issue or question that Applicant is substantially related to the Associated Entities which are suspended for non-compliance with the Commission’s rules and regulations. Further, Mr. McCann is listed as President of Applicant regarding the application at issue in the captioned matter and there is no genuine issue or question that he is also substantially related to the Associated Entities for the reasons noted above.

B. Movant is Entitled to Judgment as a Matter of Law.

10. Under K.S.A. 55-155(c)(4), if an operator is not registered with the Federal Securities and Exchange Commission, then no license application or renewal application shall be approved by the Commission until the operator demonstrates to the Commission’s satisfaction that

⁸ *O’Brien v. Leegin Creative Leather Products, Inc.*, 294 Kan. 318, 330 (2012), citing *Shamberg, Johnson & Bergam, Chtd. v. Oliver*, 289 Kan. 891, 900 (2009).

it complies with all the requirements of Chapter 55 of the Kansas Statutes Annotated, all Commission rules and regulations, and all Commission orders and enforcement agreements.

11. Here, Applicant is not registered with the Federal Securities and Exchange Commission. Therefore, before the Commission may approve Applicant's license application, Applicant must demonstrate to the Commission's satisfaction that it; any officer, director, partner, or member of Applicant; any stockholder owning in the aggregate more than 5% of the stock of the Applicant; and any spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of the foregoing comply with all requirements of Chapter 55 of the Kansas Statutes Annotated, all Commission rules and regulations, and all Commission orders and enforcement agreements.

12. As discussed above, even considering the facts in a light most favorable to Applicant, Applicant cannot demonstrate that it; any officer, director, partner, or member of Applicant; any stockholder owning in the aggregate more than 5% of the stock of the Applicant; and any spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of the foregoing comply with all requirements of Chapter 55 of the Kansas Statutes Annotated, all Commission rules and regulations, and all Commission orders and enforcement agreements. Applicant is the same Quito, Inc. which is suspended for noncompliance with six Commission dockets as noted in paragraph 2 above. Mr. McCann is also associated with multiple licenses which are currently suspended. Further, the Commission has denied the past two license applications submitted by companies where Mr. McCann was listed as a partner or officer. Nothing has changed since those license applications were denied other than additional penalty orders being issued by the Commission resulting in additional suspensions for Mr. McCann's companies. Consequently,

under K.S.A. 55-155(c)(4), the Commission cannot approve Applicant's application to obtain a KCC issued license.

13. Since the Applicant is statutorily prohibited from receiving a KCC license, Staff is entitled to judgment as a matter of law. Further, granting Staff's motion for summary judgment in this matter and denying Applicant's license application will efficiently resolve the captioned docket and prevent the docket from being a burden on Staff time. Thus, under K.S.A. 60-256(c)(2), the Commission should render summary judgment in favor of Staff.

WHEREFORE, Staff respectfully moves the Commission to grant summary judgment in the captioned matter, and for such other and further relief as the Commission deems just and equitable.

Respectfully Submitted,

/s/ Kelcey Marsh
Kelcey Marsh, #28300
Litigation Counsel | Kansas Corporation Commission
266 N. Main St., Suite 220 | Wichita, KS 67202
Phone: 316-337-6200 | Email: Kelcey.Marsh@ks.gov

FOR KCC USE ONLY

LICENSE NO: _____

EXPIR DATE: _____

KANSAS CORPORATION COMMISSION
OIL & GAS CONSERVATION DIVISION

OCT 21 2024

KCC LICENSE APPLICATION

Notice: Read instructions before completing this information.

Name: Quito, Inc Attention: _____

Address 1: 1613 W 6th Street Phone: (918) 331-6463 Email: mccanncompanies@yahoo.com

Address 2: _____ City/State/Zip: Bartlesville, Oklahoma 74003

ALL REQUIRED FORMS RELATING TO THE CONSERVATION DIVISION MUST SHOW SAME ENTITY AS ON THIS APPLICATION.

Item 1 TYPE OF LICENSE APPLICABLE: ☒ Operator ☐ Stratgraphic/Seismic ☐ Well Plugging ☐ Drilling Contractor ☐ Gas Storage
(Check all the apply) ☐ Drilling, Workover, Service Units ☐ Case Puller ☐ Personal Use ☐ Gas Gatherer

Item 2 BUSINESS ENTITY: ☐ Individual ☐ General Partnership ☐ Limited Liability Partnership ☒ Kansas Corporation
☐ Limited Liability Company ☐ Foreign Corporation

Federal Employer Identification No. 33-1114471 or Social Security No. _____

CORPORATIONS OR LIMITED PARTNERSHIPS are required to be authorized to engage in business in Kansas by the Office of the Secretary of State. Please enclose a Certificate of Good Standing from the Secretary of State's Office (785) 296-4564.

Item 3 As a business entity, are you registered with the Securities and Exchange Commission? ☐ Yes ☒ No

Item 4 REGISTERED RESIDENT AGENT (For Corporations, Limited Liability Companies, or Limited Partnerships Only)

Name: John R. Horst Phone: (620) 879-2146

Address: 207 W Fourth Ave P.O. Box 560

City/State/Zip: Caney, KS 67333 Email: jhorst48@yahoo.com

Item 5 NAME OF PARTNER(S) OR OFFICERS (Must list all. Include Name, Title, Address and Phone)

Mark W. McCann- President
1613 W 6th St
Bartlesville, OK 74003

Item 6 EMERGENCY CONTACT PERSON (Must be other than Licensee) (Alternate Address and Phone)

Name: Nicholas W. McCann Phone: (620) 515-2999

Address: 620 Barclay

City/State/Zip: Dewey, Ok 74029 Email: _____

Item 7 Dependent on type of entity, have you as an individual, partner or officer had a KCC Conservation Division License revoked, suspended or not renewed by the Commission? ☒ Yes ☐ No If yes, enclose a brief statement including name and date of revocation, suspension or non-renewal.

Item 8 Do you currently have any outstanding monetary penalties or compliance owed to the Commission or are you currently paying a monthly installment plan? ☐ Yes ☒ No

Item 9 EQUIPMENT TAG NUMBERS, YEAR, MAKE, MODEL AND TYPE OF EQUIPMENT AS LISTED ON PROPERTY TAX RENDITION ATTACH a copy of equipment assessment rendition sheets and paid personal property tax receipts ONLY on the drilling or movable well servicing equipment being licensed.

Item 10 Remittance enclosed: \$100.00 for license + \$25.00 per equipment tag = \$ 100.00 Financial Responsibility provided by: _____
Remittance enclosed: \$25.00 for personal use license = \$ _____ a) Cash \$ _____
b) Bond _____

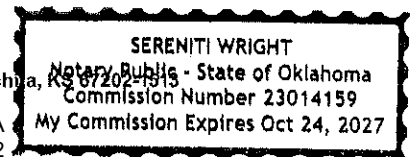
Item 11 I do hereby certify that, to the best of my knowledge, the foregoing facts and information are true and correct. c) Letter of Credit _____
Signature of authorized individual, Officer or Agent: Mark W. McCann Title: President

Item 12 Subscribed and sworn to before me this 17th day of October 20 24
[Signature] My commission expires: Oct. 24, 2027
(Notary Public)

Item 13 Well Inventory Required (Check one) ☐ Attached ☒ No wells

Mail to: KCC - Conservation Division, Licensing Department, 266 N Main St, Ste 220, Wichita, KS 67202-1515

Exhibit A
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ATTACHMENT TO
KCC LICENSE APPLICATION

The Operator's License of Quito, Inc. was non-renewed in Docket No. 22-CONS-3115-CMSC on February 9, 2023. One year from the date of entry of that Final Order has expired.

**Received by
Kansas Corporation Commission**

OCT 21 2024

Conservation Division, Wichita, KS

CERTIFICATE OF SERVICE

25-CONS-3245-CMSC

I, the undersigned, certify that a true and correct copy of the attached Motion has been served to the following by means of electronic service on May 20, 2025.

NANCY BORST
KANSAS CORPORATION COMMISSION
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/s/ Paula J. Murray

Paula J. Murray