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State Corporation Commission
of Kansas

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

REPLY TO MOTION FOR SUMMARY JUDGMENT

COMES NOW Quito, Inc. (hereafter "Quito"), and for its Reply to the Motion for Summary Judgment of Staff of the Kansas Corporation Commission shows to the Commission as follows:

Reply to Staff's Statement of Facts

1. Uncontroverted. Additional statement of material fact: the Commission's Final Order of February 9, 2023 directed that Quito's license be suspended for a period of one year. That one year period has now expired.

2. Uncontroverted in part, and controverted in part. It is uncontroverted that the Penalty Orders in the six dockets cited contain the standard recital that if Operator is not in compliance with this Order and the Order is final, then Operator's license shall be suspended without further notice and shall remain suspended until Operator complies, and that each of the Orders reference license No. 33594 previously issued to Quito. Controverted that license No. 33594 has been reinstated from and after February 9, 2023.

Docket No. 24-CONS-3072-CPEN involved the assessment of a penalty against Quito pursuant to K.A.R. 82-3-120. Additional statement of material fact: the Penalty Order in that docket was issued on September 26, 2023, and within the one year term of the non-renewal/suspension of Quito's license.

Docket No. 25-3092 involves the submission of forms U-8 for the two (2) wells identified in the Penalty Order. Additional statement of material fact: those corrected forms have been submitted.

Docket No. 25-3168 involves mechanical integrity testing of four (4) wells. Additional statement of material fact: two (2) of the wells have been successfully tested. The remaining two (2) well were on the contractor's list to be tested when the suspension of Quito's injection authority arising out of the Commission's Order in Docket No. 24-3072 was enforced by Staff. By email dated March 3, 2025, the contractor, Joe Harper, was advised that Commission Staff would no longer participate in MIT testing from and after February 27, 2025. See: Affidavit of Joe Harper and email of John R. Horst to Tristan Kimbrell attached, as Exhibits "Q-1 and Q-2", respectively.

Docket No. 25-3200 also involved MIT testing of three (3) wells. Additional statement of material fact: the McFarland-Delong #7 passed an MIT test on February 7, 2025. The Morton #3 and the Flossie-White #14 wells were scheduled for testing on February 27, 2025, when Commission Staff ceased participation in MIT testing. See

Affidavit of Joe Harper, attached.

Docket No. 25-3230 involves the MIT testing of the Smith-Lolly #5 well. Additional statement of material fact: it was tested and passed on February 25, 2025. See Affidavit of Joe Harper, attached.

Docket No. 25-3267 involves the MIT testing of the Tom Appleby #3 well. Additional statement of material fact: it was one of the wells that was scheduled for testing on February 27, 2025, when Commission Staff ceased participation in MIT testing. See Affidavit of Joe Harper, attached.

3. Controverted. The May 6, 2004 application of Quito, **LLC** was the result of a clerical or typographical error. Simply stated, no such entity exists. If the entity does not exist, it has no officers or partners who can be "associated substantially" with any other person or entity, and for that reason Quito finds it unnecessary to respond to the remainder of paragraph 3 of Staff's Statement of Facts.

4. Paragraph 4 of Staff's Statement of Facts is not controverted.

5. Controverted. Quito controverts the assertion that it is "associated substantially" with McC Oil Company, Inc., Wildcat Energy, Inc., or Thor Operating, LLC, or that any association which either Quito or Mark W. McCann may have with any non-compliant entity is a material or relevant factor or criteria relating to license eligibility. See Affidavit of Mark W. McCann attached hereto as Exhibit "Q-3".

6. Additional Statement of Material Fact: upon investigation of the four (4) wells identified in Docket 16-CONS-361-CSHO, it appears that they have all been plugged. See Affidavit of Mark W. McCann.

Standard of Review

Quito agrees with Staff's recitation of the standard of review on the Motion for Summary Judgment.

Arguments and Authorities

For the reasons set forth below, Staff in its Motion for Summary Judgment invites the Commission to act beyond the authority conferred to it by the Legislature in a manner contrary to the criteria established in K.S.A. 55-155 for issuing licenses to applicants, and the Motion should therefore be denied.

I. Statutory Construction

As noted in Johnson v. U.S. Food Service, 312 Kan. 597, 600-01, 478 P.3d 776 (2021):

> "The most fundamental rule of statutory construction is that the intent of the Legislature governs if that intent can be ascertained. In ascertaining this intent, we begin with the plain language of the statute, giving common words their ordinary meaning. When a statute is plain and unambiguous, an appellate court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words. But if a statute's language is ambiguous, we will consult our canons of construction to resolve the ambiguity. [Citations omitted.]"

As was noted in Graham v. Dokter Trucking Group, 284 Kan. 547, 554, 161 P.3d 695

(2007):

> "When a statute is plain and unambiguous, we must give effect to its express language, rather than determine what the law should or should not be. We will not speculate on the legislative intent and will not read the statute to add something not readily found in it. If the statute's language is clear, there is no need to resort to statutory construction."

See also: State v. Brian, 281 Kan. 157, 159, 130 P.3d 85 (2006) Golden Rule Ins. Co. v. Tomlinson, 300 Kan. 944, 335 P.3d 1178 (2014); John M. Denman Oil Co. v. State Corp. Comm'n of Kan., 51 Kan. Ap. 2d 98, 342 P.3d 958 (2015).

II. Extent of Agency Authority

Although the authority of the Commission to regulate various aspects of the oil and gas industry is broad, it is not limitless. Administrative agencies are creatures of statute and their power is dependant upon authorizing statutes; therefore any exercise of authority claimed by the agency must come from within the statutes. There is no general or common law power that can be exercised by an administrative agency. Am. Trust Adm'rs v. Sebilius, 273 Kan. 694, 44 P.3d 1253 (2002). As noted in Fischer v. Dep't of Revenue, 317 Kan. 119, 121-22, 526 P.3d 665, 667 (2023):

> "As an agency of the executive branch, KDOR derives authority to initiate an agency proceeding—what we call subject matter jurisdiction—from statutes."

Citing Rodewald v. Kansas Dep't of Revenue, 296 Kan. 1022, 1038, 297 P.3d 281 (2013); Stutsman v. Kansas Dept. of Revenue, No. 119, 528, 437 P.3d 102, 2019 WL 1303063, at 3 (Kan. App. 2019) (unpublished opinion). In a case involving natural gas sales and

transportation contracts submitted to the Commission by a natural gas public utility, Kan. Pipeline P'ship v. State Corp. Comm'n, 22 Kan. App. 2d 410, 416-17, 916 P.2d 76, 81-82 (1996) it was stated:

"No one contests that the KCC's authority is limited to that conferred by statute." citing Cities Service Gas Co. v. State Corporation Commission, 197 Kan. 338, 342, 416 P.2d 736 (1966); Kansas-Nebraska Natural Gas Co. v. Kansas Corporation Commission, 4 Kan. App.2d 674, 675, 610 P.2d 121, rev. denied 228 Kan. 806 (1980).

III. Construction of K.S.A. 55-155

The construction of K.S.A. 55-155 was previously briefed in Docket No. 22-CONS-3115-CMSC, but the Commission did not address the proper construction of the statute in that docket. The provisions of K.S.A. 55-155(c)(4)(A)-(D) are clear and unambiguous, as is the "substantially associated" language of subsection (d)(3)(B).

K.S.A. 55-155 sets forth the criteria which a person must show to entitle that person to be issued an oil Operator's license.

Quito filed its application for an oil Operator's license on October 21, 2024. On that date, Quito was not registered with the Federal Securities and Exchange Commission. The sole officer, director and shareholder of Quito as of the date of filing its application was Mark W. McCann (hereafter "McCann"). In order to demonstrate to the Commission that Quito was eligible to receive a license, it was required to show

that each of the following:

(A) the applicant (Quito);

(B) any officer, director, partner or member of the applicant (McCann);

(C) any stockholder owning in the aggregate more than 5% of the stock of the applicant (McCann); and

(D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of the foregoing (of McCann),

were in compliance with the requirements of Chapter 55 of the Kansas Statutes Annotated, all rules and regulations adopted thereunder, and all Commission orders and enforcement agreements. Staff's Statement of Facts does not assert that either Eric A. McCann or Maricela McCann, the brother and ex-wife of McCann, respectively, have ever been issued an Operator's license. Neither McCann, nor any person related to McCann within the degrees set out above, had previously been licensed by the Commission. There appears to be no factual dispute that Quito's sole officer, director and shareholder McCann is fully compliant with all of the applicable statutes, rules, regulations, orders and agreements of the Commission.

In addition to the qualifications under subsection (c)(4), under subsection (c)(6), an applicant must also comply with the financial responsibility requirements set out in subsection (d) of the statute. Subsection (d) sets out six alternative methods by which an applicant can demonstrate financial responsibility to the Commission. Subsections

(d)(1) and (2) allow the applicant to post a performance bond or letter of credit based on the number and depth of wells the applicant is accepting responsibility for. Subsections (d)(4) allows the operator to post a non-refundable fee equal to 6% of the bond or letter of credit that would be required under subsections (d)(2). Subsection (d)(5) allows the applicant to grant the state a first lien on tangible personal property associated with the production facility. Subsection (d)(6) allows the applicant to provide other financial assurance approved by the Commission. Subsections (d) (1),(2),(4),(5) and (6) each establish alternatives to furnishing proof of financial assurance under (d)(3).

Subsection (d)(3) allows the operator to pay a non-refundable fee of $100.00 per year to assure financial responsibility if certain other conditions are met. The first condition is that the operator has an acceptable record of compliance during the preceding 36 months under subsection (d)(3)(A). The second condition is that the operator has no outstanding undisputed orders or unpaid fines, penalties or costs, and "**has no officer or director that has been or is associated substantially with another operator that has any such outstanding orders or unpaid fines, penalties or costs**" (emphasis supplied). Quito submits that the correct construction of K.S.A. 55-155(d)(3)(B) is that it means what it plainly says - if a licensee has an acceptable record of compliance and has no officer of director who is associated substantially with another non-compliant operator, its financial responsibility fee is $100.00 per year.

The context of subsection (d)(3) in the financial responsibility section of the statute in which the "associated substantially" language appears is instructive. The language of subsection (c), which directly addresses the criteria for obtaining a license, refers to the "applicant". Subsection (d) is phrased in terms of the "operator". Under subsection (c), the "applicant" must demonstrate compliance, but under subsection (d), the "operator" must provide financial assurance. Under subsection (c)(6), the "applicant" must comply with subsection (d). Subsection (d)(3) is but one of six non-exclusive methods by which an operator may provide proof of financial assurance. If the operator does not have an acceptable record of compliance during the preceding 36 months, that factor excludes the operator from demonstrating qualification under subsection (d)(3) without reference to consideration of any "association" of the applicant's officers or directors, but it does not exclude the operator from providing proof of financial responsibility by way of one of the other five remaining alternates. If the operator has outstanding undisputed penalties or unpaid fines, that factor excludes the operator from demonstrating qualification under subsection (d)(3) without reference to consideration of any "association" of the applicant's officers or directors, but it does not exclude the operator from providing proof of financial responsibility by way of one of the other five remaining alternates. If the operator has an officer or director that has been associated substantially with another operator that has

outstanding orders or unpaid fines, penalties or costs, that factor excludes use of subsection (d)(3), but it does not exclude use of any of the other five alternate methods to establish proof of financial responsibility. If Am. Trust Adm'rs v. Sebillius (supra) and Fischer v. Dep't of Revenue (supra) are correct statements of the law in this state, absent express statutory authorization, the Commission has no authority to pierce Quito's corporate veil in order to look to, evaluate or consider whether Quito's sole officer, director and shareholder is associated substantially with another entity for the purpose of determining whether Quito should be issued a license, as opposed to determining Quito's eligibility to provide financial assurance under subsection (d)(3) of the statute. Adopting a construction of subsection (d)(3) of the statute that includes an "association" test for license eligibility purposes expands its plain meaning beyond that intended by the legislature.

If the legislature intended that an applicant with an officer, director or shareholder or relative holding an office or interest in a noncompliant entity should thereby be excluded from obtaining an Operator's License, it could have easily included that condition in the licensing statute. It did not.

IV. Separate Entities

Quito; McC Oil Company, Inc.; Wildcat Energy, Inc. and Thor Operating, LLC are separate entities, but it appears those distinctions are not observed in the Motion for

Summary Judgment.

Corporations are creatures of statute. Here in Kansas, the general corporation code is set out at K.S.A. 17-6001 et seq.. K.S.A. 17-6001(a) provides that:

> "Any person, partnership, association or corporation, singly or jointly with others, and without regard to such person's or entity's residence, domicile or state of incorporation, may incorporate or organize a corporation under this code by filing with the secretary of state articles of incorporation which shall be executed and filed in accordance with K.S.A. 2015 Supp. 17-7908 thought 17-7910, and amendments thereto."

"Person" is a term defined under K.S.A. 55-150(f). A "person" means:

> "any natural person, partnership, governmental or political subdivision, firm, association, corporation or other legal entity."

In adopting the definition of a "person" as part of the Act for Protection of Surface and Groundwater, the legislature made it clear that it intended that the distinction between natural and artificial entities be observed by the Commission.

The Commission has adopted regulations, and at K.A.R. 82-3-101(50), defines the term "Person" as meaning:

> "any natural person, corporation, association, partnership, governmental or political subdivision, receiver, trustee, guardian, executor, administrator, fiduciary, or any other legal entity",

this regulation further recognizes the distinction to be made between natural persons, artificial entities, governments, court-appointed officers and fiduciaries.

In Kansas, the judiciary has authority to ignore the existence of a legal entity and

look to its principal or principals, and this authority is exercised by the Courts by piercing the corporate veil.

The predominate test of piercing the veil applied by Kansas Courts is articulated in Amoco Chemicals Corp. v. Bach, 567 P.2d 1337 (1977). There, the Kansas Supreme Court set forth the following eight factors:

> (1) undercapitalization of a one-[person] corporation, (2) failure to observe corporate formalities, (3) non-payment of dividends, (4) syphoning of corporate funds by the dominate shareholder, (5) non-functioning of other officers or directors, (6) absent corporate records, (7) the use of the corporation as a facade for operations of the dominate stockholder or stockholders, and (8) the use of the corporate entity in promoting injustice or fraud.

Veil-piercing is a judicial function. As such, it is a quintessential function of the general or common law power that Courts possess.

Kansas case law confirms that state agencies cannot disregard corporate separateness or impose one company's liabilities on an affiliated company or individual absent explicit legislative authority. In Hill v. Kansas Dep't of Labor, 22 Kan. App. 2d 215, 210 P.3d 647 (2009) the agency attempted to hold a corporation's owner personally liable for the corporation's violation of law for failing to carry workers compensation insurance. The Court held that there was no legal or factual basis to "support...disregard of the corporate entity" in that administrative enforcement action, and that the penalty could only be imposed on the corporate employer. The agency had "no basis to disregard [the] corporate entity and pierce the corporate veil" in the

absence of statutory authority. In Cray v. Kennedy, 230 Kan. 663, 640 P.2d 1219 (1982), the Supreme Court similarly held that the Department of Revenue could not impose additional qualifications on a liquor license application by imputing misconduct from a related entity. This was an ultra vires act because the agency's power is limited to what is explicitly authorized by statute. In Pemco, Inc. v. KDOR, 258 Kan. 717, 907 P.2d 863 (1995), the Court reiterated: "An administrative body has only such authority as is expressly or by necessary implication conferred by statute."

Kansas' approach is not unique. For example, in United States v. Bestfoods, 524 US 51 (1998), the EPA sought to hold a parent corporation liable for the environmental clean up liability of its subsidiary. The Court affirmed that "CERCLA does not purport to reject this bedrock principal" that a parent corporation is not liable for a subsidiary's acts absent piercing of the corporate veil or other exceptional circumstances. In Bestfoods, the Court noted that even in a regulatory context, a parent company could only be held liable if either the common law veil-piercing test was met or the parent itself directly operated the facility - mere ownership was insufficient. The Court pointedly required Congress to "speak directly" if it intended to abrogate the traditional rule of limited liability. Veil-piercing is "equitable at its core," available to Courts to impose liability on shareholders or affiliates when the corporate form is misused. Veil-piercing is thus recognized as a "rare" and drastic remedy, invoked only to prevent

fraud or injustice. Lindsey D. Simon, Chapter 11, Shapeshifters, 68 Admin. L. Rev. 233 (2016). Notably, Courts - not executive agencies - traditionally undertake the fact intensive, case-by-case analysis required to "pierce the veil." Wagenmaker & Oberly, Piercing the Corporate Veil of Nonprofits, Wagenmaker & Oberly Blog (November 19, 2018).

In Texas the Railroad Commission regulates oil and gas operators, but cannot summarily impose an operator's liabilities on that operator's owners or affiliates without Court intervention. In Love v. State, 972 SW2d 114 (Tex. App. - Austin 1998), the State (on the Commission's behalf) sued two corporate officers of an oil operator to hold them personally liable for well-plugging violations. The State's petition advanced veil-piercing theories (alter ego and "sham to perpetrate a fraud"), but notably this was pursued in Court, with a jury trial, rather than by an administrative order. The fact that the Commission needed the Attorney General to bring a separate lawsuit and prove alter ego illustrates that the agency itself lacked power to unilaterally disregard the corporate entity. Texas law treats veil-piercing as a judicial question, requiring a showing of actual fraud or similar misconduct. Texas Courts have since reaffirmed that disregarding the corporate form is an equitable judicial act, not something an agency or even a jury can do absent proper instructions and legal standards. Elizabeth S. Miller, Recent Cases Involving Limited Liability Companies and Partnerships, Baylor Law

School (Nov. 2023) at 3.

A recent Arizona case bluntly illustrates judicial resistance to an agency's attempt to expand its reach beyond the corporation. In State of Arizona v. Tombstone Gold & Silver, Inc., No. CV2021-005917 (Ariz. Super. Ct. Maricopia Cty. Apr. 1, 2024), the Arizona Department of Environmental Quality (ADEQ) sued a small mining company and also sued its individual officers for civil penalties, despite no Arizona statute making corporate officers generally liable. ADEQ urged the Court to adopt the "responsible corporate officer" doctrine or otherwise treat the officers as "operators" personally liable for the company's regulatory violations. The Arizona Trial Court "resoundingly rejected" this gambit. Citing Bestfoods and two centuries of corporate law, the Court held there was no legal or evidentiary basis to hold the individual defendants liable; the State had shown neither that any officer "specifically and deliberately directed" a violation nor that they acted outside the normal scope of their corporate roles. Absent such a showing, the individuals were "not...operators...under the Bestfoods analysis, or any other rational definition" of personal liability. The Court dismissed all claims against the officers and invited them to seek attorneys' fees. As the Court put it, "for now...individuals remain safe from the State's attempts to disregard the corporate form and make them personally liable" for a company's wrongdoing.

Oklahoma law likewise indicates that the Corporation Commission cannot impose

liability on non-parties or affiliates without judicial action. The Oklahoma Supreme Court has long distinguished between the Commission's public-regulatory powers and the judiciary's role in adjudicating private rights. Gulf Oil Corp. v. State, 360 P.2d 993 (1961) noted the "general rule" that each corporation is a "distinct legal entity separate and apart from...other corporations or stockholders." In practice, if the Oklahoma Corporation Commission suspects abuse of the corporate form (e.g. a shell operator used to avoid compliance), they must turn to the Courts. These principals were applied in Penmark Resources Co. v. OK Corporation Cmm'n, 2000 OK Civ. App. 29, 996 P.2d 958. In Penmark, neither the Commission nor the Court suggested the Commission had any independent equitable power to rewrite corporate relationships. More broadly, Oklahoma Courts have reiterated that the Commission "is not a Court of general jurisdiction" and cannot adjudicate traditional private-law liabilities such as contract or tort claims between parties (which would include equitable shareholder liability) - those issues are for the District Courts.

Legal scholarship supports the view that veil-piercing is "strictly a judicial act" not easily transplanted into the administrative process. Professor Lindsay Simon, in an Administrative Law Review article, observed that agencies have sometimes tried to employ their "own flavor" of veil-piercing in enforcement contexts, but this raises uncertainty and fairness concerns. Simon, Supra Note 4. Another commentator notes

that even if legislatures did grant administrative agencies explicit veil-piercing power, it remains "unclear" how agencies would implement it and what procedural safeguards would apply. Joseph A. Schremmer, Impeding Regulatory Failures in Oil and Gas Licensing: A Discussion of the Public Trust Doctrine and the Public Interest, 45 Envtl. L. 1 (2021), notes the concern is that agencies lack both the equitable jurisdiction and the robust fact-finding procedures of Courts (e.g. jury trials, full discovery) that accompany veil-piercing determinations. As one law professor put it, agencies are meant to implement statutes, "not...to apply judicial decisions" like the alter ego doctrine in the absence of a statutory mandate. Mashaw, Jerry Lewis, Agency-Centered or Court-Centered Administrative Law: A Dialogue With Richard Pierce on Agency Statutory Interpretation. Administrative Law Review, Vol. 59, No. 4, 207, Yale Law School, Public Law Working Paper No. 149.

Commission Staff have cited to Fatzer v. Zale Jewelry Co. of Wichita, Inc., 179 Kan 628, 298 P. 2d 283 for the proposition that an agency may pierce the corporate veil. In that case, the Kansas Supreme Court ousted a corporation from practicing optometry, but that action was taken in a quo warranto action brought on behalf of the licensing board by the attorney general. The Zale Jewelry case did not involve agency action.

K.S.A. 55-155 (c)(4)(A)-(D) contains express veil-piercing language, and the legislature has empowered the Commission to look beyond the veil of an artificial

entity, if it is not registered with the Securities and Exchange Commission, to determine if its officers, directors, shareholders owning more that 5%, or persons related to such officers, directors or shareholders within the degrees of marriage or blood set forth in that subsection also comply with the Chapter 55 statutes and the rules, regulations, orders and agreements of the Commission. With reference to Quito's application for a new oil Operator's License, the legislature has expressly directed the Commission to look beyond the corporate veil of Quito to determine if its sole officer, director and shareholder is also compliant with the Chapter 55 statutes and the rules, regulations, orders and agreements of the Commission. Quito's sole officer, director and shareholder is Mark W. McCann. As noted above, there is no suggestion that either Mr. McCann, nor any person within the degrees of relationship specified in the statute, has ever been issued an oil Operator's License in the State of Kansas. Accordingly, Mr. McCann is compliant.

Quito is the applicant for a new license. The Statement of Facts do not suggest that Quito is an officer or director of a non-compliant entity, and even if that were asserted, it is not a factor in determining Quito's eligibility for a license. How its "association" with any non-compliant entity impacts Quito's eligibility is likewise not a factor.

V. DOCKET NO. 24-CONS-3072-CPEN

For the following reasons, suspension of Quito's license in the above docket should not be considered by the Commission with respect to Quito's application for a new license. In the Penalty Order issued by the Commission in 24-3072, the Commission's Order cited to K.A.R. 82-3-120(2) which states:

> "Each licensee shall annually submit a completed license renewal form on or before the expiration date of the current license."

Additionally, K.A.R. 82-3-120(a)(1)(C) states in part:

> "Each operator in physical control of any such well or gas storage facility shall maintain a current license even if the well or storage facility is shut in or idle."

K.S.A. 55-155(e) provides in part:

> "No new license shall be issued to any applicant who has had a license revoked until the expiration of one year from the date of such revocation."

K.A.R. 82-3-120(l) provides in part:

> "A denial pursuant to K.S.A. 55-155(c)(3) or (4), and amendments thereto, shall be considered a license revocation."

Administrative regulations in conflict with the Constitution or statutes are generally declared to be null or void. Harris v. Alcoholic Beverage Control Appeals Board (2nd Dist.), 228 Cal. App. 2d 1, 39 Cal. Rptr. 192; Cartwright v. State Board of Accountancy, (Colo App) 796 P.2d 51; Liberty Homes, Inc. v. Department of Industry, Labor & Human Relations, 136 Wis. 2d 368, 401 NW2d 805. When a conflict exists

between a statute and a regulation, the regulation must be set aside to the extent of the conflict. Ex parte State Dept. of Human Resources, (Ala) 548 So. 2d 176; Idaho County Nursing Home v. Idaho Dept. of Health & Welfare, 120 Idaho 933, 821 P.2d 988.

As has been previously noted, on February 9, 2023, Quito's application for renewal of its operator's license was denied by Commission Order. Because the effect of denial of an application to renew a license is considered a license revocation under K.A.R. 82-3-120(i) and because under the statute, K.S.A. 55-155(e), no new license **shall** be issued until the expiration of one year from the date of such revocation, the provisions of K.S.A. 55-155(e) conflict with the mandates of K.A.R. 82-3-120(2) and K.A.R. 82-3-120(a)(1)(C). Accordingly, the statute controls over the conflicting provisions of the regulation. The conflicting provisions of the regulation - K.A.R. 82-3-120(2) and K.A.R. 82-3-120(a)(1)(C) - should be considered null and void.

Additional reasons why the Commission should disregard the suspension of Quito's license in Docket #24-3072 have previously been presented. In its Penalty Order, the Commission found that Quito was responsible for the wells identified in Exhibit A attached to its Order, and it had committed a violation of K.A.R. 82-3-120(a) because Quito remained responsible for the subject wells and its operator's license was expired. Quito asserted in the prior administrative proceeding that the penalty assessed in this docket resulted from the Commission's Order in Docket 22-CONS-

3115-CMSC. In that docket, Quito had sought to have its license renewed, but the Commission declined to do so. Quito did not neglect or fail to apply for renewal of its operator's license; it was denied its request for renewal by virtue of the Commission's Final Order. It is inconsistent and contradictory for an agency to penalize a person who seeks to have its license renewed, but is denied renewal, for having wells on its expired license during the one year period during which the agency "shall not" renew the license.

Finally, the imposition of the penalty in docket #24-3072 involves application of inconsistent and contradictory regulations. On the one hand, K.A.R. 82-3-120 mandates that the license be renewed and maintained. On the other hand, Quito had been denied renewal of its license, the effect of which, under the statute - K.S.A. 55-155 - is a prohibition on renewal for one year. The suspension and penalty assessed in docket #24-3072 was arbitrary, unreasonable, and capricious; it produced a result that was inconsistent with non-renewal of Quito's license, and should be disregarded in determining Quito's eligibility for a new Operator's License.

VI. Additional Penalty Orders

Although the effort was belated, Quito had contracted with Emerson Operating, LLC to complete the required MIT tests, and Emerson was in the process of completing those tests when suspension of Quito's injection authority arising out of docket #24-

3072 apparently formed the basis of Staff's determination to cease MIT testing. Quito filed a Motion for Stay of the Order issued in docket #24-3072, but that motion was denied. Quito is willing to comply. Issuance of a new Operator's license would facility at that effort.

CONCLUSION

For the reasons set forth above, the Motion for Summary Judgment should be denied.

SUBMITTED BY:

JOHN R. HORST, P.A.

By /s/ John R. Horst
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Our File #2844
S. Ct. #09412

AFFIDAVIT

STATE OF KANSAS)
)SS
COUNTY OF MONTGOMERY)

Joe Harper, of lawful age, being first duly sworn on oath, states:

That affiant is the sole member of Emerson Operating, LLC. Emerson Operating, LLC, as an independent contractor, contracted with Quito, Inc. to conduct mechanical integrity testing of various injection wells listed on the operator's license of Quito, Inc. The testing was conducted under my personal supervision, and I am familiar with the facts set forth in this Affidavit.

An MIT test was conducted on the Smith-Lolly #5 well, API #15-019-20633, on February 25, 2025. The test was successful.

An MIT test was conducted on the M&M Kirchner #4 well, API #15-019-24035, on November 13, 2024. The test was successful.

An MIT test was conducted on the Smith-Lolly #2 well, API #15-019-20614, on November 13, 2024. The test was successful.

An MIT test was conducted on the McFarland-Delong #7 well, API #15-019-20551, on February 7, 2025. The test was successful.

I had scheduled additional MIT tests with Thad Triboulet on the Morton #3 well, API #15-019-19567; Morton #28 well, API #15-019-21255-00-03; and Flossie-White #14 well, API #15-019-20902-00-03 on Friday February 28, 2025, but those tests were cancelled. I had inquired of Duane A. Sims by email, and was advised because the authorization of the injection/disposal wells listed on Quito's license had been revoked the tests had been cancelled.

The additional injection wells which needed MIT tests were the Tom Appleby #3 well, API #15-019-24117-00-01; the Bever #1 well, API #15-019-20554-00-02; Smith-Lolly #1, API #15-019-20613-00-01; and the Solomon #61 well, API #15-019-24306. All the wells list in this paragraph were wells that Thad Triboulet was wanting tested prior to March 1, 2025. The testing began, but all of the wells in this paragraph had not been scheduled for testing.

Additionally, the Flossie-White #14 well, API #15-019-20902-00-03 initially failed testing and failed the first re-test. I had ordered parts to repair the well when MIT testing ceased. The Bever #1 well, API #15-019-20554-00-02 also needed to be tested, but we were unable to access that well location. The access road was muddy and needed repair.

Further Affiant sayeth naught.

Joe D Harper

Joe Harper

Subscribed and sworn to be me this 12th day of June, 2025.

Notary Public

My Appointment Expires:

JOHN R. HORST
Notary Public - State of Kansas
My Appt Expires 8/12/26

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Penalty Order; Docket No. 25-CONS-3267-CPEN

From: John Horst (jrhorst48@yahoo.com)

To: tristan.kimbrell@ks.gov

Cc: kelcey.marsh@ks.gov; mccanncompanies@yahoo.com; molly.aspan@practus.com

Date: Wednesday, March 26, 2025 at 11:49 AM CDT

Tristan, from an economic standpoint, review of a $1,000.00 penalty cannot be justified, but for what it may be worth, I wanted to call your attention to the following information:

On November 21, 2024, the Commission issued its Final Order. In paragraph C of the Commission's Order, the Commission ordered that Clauses C and D of the Penalty Order issued September 26, 2023 would be enforced and the deadlines would run from the date of the Final order. If my math is correct, 60 days from November 21, 2024 would be January 20, 2025, and that would be the day Quito's injection authority was revoked.

The 5-year MIT test on the Appleby #3 well was due on January 14, 2025. Quito was issued a NOV letter on January 24, 2025 that the MIT was due, and that it would be penalized if the MIT was not completed by February 7, 2025.

Because the operator's license of Quito (No. 33594) has been non-renewed, Quito contracted with Emerson Operating, LLC (license No. 36165) to conduct the MIT. Joe Harper, principal of Emerson, had contacted Thad Triboulet and scheduled the MIT to occur on Feb. 27, 2025. However, on Thursday Feb 26, Mr. Triboulet contacted Mr. Harper to let him know that he would not be showing up for the MIT. Subsequent email communications from Mr. Harper to Duane Sims then revealed that the underlying reason for Thad's call to Mr. Harper was that Quito's injection authority had been suspended, and further MIT testing would not be conducted. Quito has filed a petition for judicial review of the November 11 Order, and has also now filed a Motion for Stay of the Revocation with the Commission, and that Motion is pending at the time of this email communication to you.

Although the operator's license of Quito was non-renewed back in February of 2023, prior to the recent developments, its continuing conduct of MIT tests was apparently not considered to be the "drilling, completing, servicing, plugging, or operating any oil, gas, injection, or monitoring well" under K.A.R. 82-3-120, and Quito received penalties for failure to timely conduct MIT testing. If, as a result of the revocation of its injection authority under K.A.R. 82-3-408 (a), it is no longer directed to test, it seems a bit inconsistent to fine it for failure to test after the authority to test expired.

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AFFIDAVIT

STATE OF KANSAS)
)SS
COUNTY OF MONTGOMERY)

Mark W. McCann, of lawful age, being first duly sworn on oath, states:

I am the sole officer, director and shareholder of Quito, Inc., and have personal knowledge of facts set forth in this Affidavit.

Quito, Inc. is a Kansas Corporation. Its Articles of Incorporation were initially filed with the Kansas Secretary of State on May 2, 2005. I am the sole officer, director and shareholder of Quito, Inc.

I am a resident of the State of Oklahoma.

McC Oil Company, Inc. was a Kansas Corporation. Its Articles of Incorporation were initially filed with the Kansas Secretary of State on February 15, 1994. It was dissolved by filing a Consent to Dissolution with the Kansas Secretary of State on December 30, 1998. I was the sole owner of all of the issued and outstanding common stock of McC Oil Company, Inc. at the time of its dissolution.

I have reviewed the Commission's Penalty Order in Docket No. 16-CONS-361-CSHO. That Order indicates that there are four (4) wells that remain unplugged on the Operator's License of McC Oil Company, Inc. Those four wells are:

Name	API#	Type
Focht A-1	15-019-20509-0001	EOR
Floyd Casement 6	15-019-25043-0001	EOR
Austin 10	15-019-91774	EOR
Sears 4	15-019-91986	EOR

I have investigated the status of three of those four wells. I also spoke to Duane Sims.

With respect to the Focht A-1 well, the owners of the land upon which that well is located are the David Allen Lewis Trust and the Karen M. Lewis Trust. The identified location of the Focht A-1 well is the SW/4 SW/4 SW/4 of Sec. 21, T33S, R12E, Chautauqua County, Kansas. Although there does not appear to be any current oil production on that tract, there is production on a nearby tract operated by Reata

Petroleum, LLC in the NW/4 of Sec. 27, T33S, R12E. I spoke to the principal of Reata, Kyler Finney, and conducted a visual inspection of the property. Mr. Finney is unable to locate the Focht A-1 well, and I could not find it either.

With respect to the Austin 10 well, the owners of the land are Tracy L. Williams and Teresa L. Williams. I checked with the landowners and they are not aware of the existence of the Austin 10 well.

The Sears 4 well was located on what we previously referred to as the South Sears Lease. The owners of the land upon which the Sears #4 well was located are Mark R. Sharpe and Renee M. Sharpe. I spoke to the landowners and conducted a visual inspection but could not find the Sears #4 well at the location identified, and the landowners advised that it had been plugged.

I spoke to Duane Sims about the four wells shown to exist on the Operator's License of McC Oil Company, Inc.. Mr. Sims advised me that it was his understanding that each of those wells had been plugged. When I examined the records which are publicly available on the Kansas Geological Survey Website, those records do not show that the four wells listed above have been plugged.

Wildcat Energy, Inc. was a Kansas Corporation. Its Articles of Incorporation were originally filed with the Kansas Secretary of State on July 19, 1994. Wildcat Energy, Inc. was originally formed by Eric A. McCann. He is my brother. Eric A. McCann later transferred ownership of all of the stock of Wildcat Energy, Inc. to my ex-wife Maricela McCann in approximately 1996. I was divorced from Maricela McCann on May 21, 1998. The Articles of Incorporation of Wildcat Energy, Inc. were forfeited on or about July 15, 2020, for failure to file its Annual Report. I have never been an officer, director or shareholder of Wildcat Energy, Inc..

Thor Operating, LLC is a Kansas Limited Liability Company. Thor was originally organized by the filing of its Articles of Organization with the Kansas Secretary of State on February 10, 2023. Scott W. Goetz is the sole managing member of Thor Operating, LLC. Quito, Inc. did previously execute T-1 forms for the purpose of transferring wells on eight leases previously operated by Quito, Inc. to Thor Operating, LLC.

I have not held an Operator's License in my name individually, and I have never been found to be in violation of any of the statutes under Chapter 55 governing oil and gas operations, or the rules, regulations, orders and agreements of the Kansas

Corporation Commission.

Further Affiant sayeth naught.

Mark W. McCann

Subscribed and sworn to be me this 13th day of June, 2025.

Notary Public

My Appointment Expires:

JOHN R. HORST
Notary Public - State of Kansas
My Appt. Expires 12/23/2026

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of June, 2025, the above and foregoing Reply to Motion for Summary Judgment was electronically filed and a copy emailed to:

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/s/ John R. Horst
JOHN R. HORST