

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

**Doddridge County Circuit Court
Civil Action No. 19-AA-1
The Honorable Judge Sweeney**

**THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,**

**THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County, and**

**THE COUNTY COMMISSION OF DODDRIDGE COUNTY,
Sitting as the Board of Assessment Appeals,**

Respondents.

TO: THE HONORABLE CHIEF JUSTICE

**ANTERO RESOURCES CORPORATION'S
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Petitioner, Antero Resources Corporation (“Antero”), by counsel, John Meadows, Craig Griffith, and the law firm of Steptoe & Johnson PLLC, respectfully requests the above-styled case be referred to the Business Court Division for all further proceedings. Trial Court Rule 29.04 expressly provides that “complex tax appeals are eligible to be referred to the Business Court Division.” W. Va. Trial Ct. R. 29.04. This matter constitutes a complex tax appeal, specifically concerning tax year 2019, and it involves issues for which specialized treatment will be helpful. For these reasons, the Court should grant Antero’s Motion to Refer Case to the Business Court Division.

Critically, the following related actions regarding tax years 2016 and 2017 have already been referred and transferred to the Business Court Division:

1. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 17-C-98-2, Harrison County Circuit Court.
2. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 17-AA-3, Doddridge County Circuit Court.
3. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 17-AA-2, Ritchie County Circuit Court.
4. *Antero Resources Corporation v. The Honorable Mark Matkovitch, et al.*, Civil Action Number 16-AA-1, Tyler County Circuit Court.
5. *Antero Resources Corporation v. The Honorable Mark Matkovitch, et al.*, Civil Action Number 17-AA-1, Doddridge County Circuit Court.
6. *Antero Resources Corporation v. The Honorable Mark Matkovitch, et al.*, Civil Action Number 17-AA-1, Ritchie County Circuit Court.
7. *Antero Resources Corporation v. The Honorable Mark Matkovitch, et al.*, Civil Action Number 17-AA-1, Tyler County Circuit Court.

The above-styled cases regarding tax years 2016 and 2017, which have already been referred and transferred, present claims and issues of law that are identical to those in this case.

Similarly, the following cases are currently pending in various Circuit Courts for tax years 2018 and 2019 and also should be the subject of referral:

1. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 18-AA-1, Doddridge County Circuit Court.
2. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 18-AA-1, Ritchie County Circuit Court.
3. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 20-P-83-2, Harrison County Circuit Court.
4. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 18-P-235-3, Harrison County Circuit Court.
5. *Antero Resources Corporation v. The Honorable Dale Steager, et al.*, Civil Action Number 18-AA-1, Tyler County Circuit Court.

Antero previously appealed the West Virginia Department of Revenue, State Tax Department, Property Tax Division's assessment of its wells in Tyler, Harrison, Doddridge, and Ritchie Counties for tax years 2016 and 2017. This matter involves the same arguments for tax year 2019 in Doddridge County, and the above-listed matters involve the same arguments for tax years 2018 and 2019 in Tyler, Harrison, Doddridge, and Ritchie Counties. In the interest of judicial economy, these cases should be consolidated and heard together by the Business Court Division. If these cases are not consolidated, one Business Court judge and four different circuit courts, comprising multiple judges, will have to hear and decide the same issue, possibly reaching inconsistent results. Thus, not only is this precisely the type of case suited to the Business Court Division, but, here, granting the Motion to Refer will also accomplish the important goal of judicial economy and consistency.

I. INTRODUCTION AND BACKGROUND

Antero is a producer of natural gas in West Virginia, with Marcellus wells located in the relevant counties. Those wells are appraised by the West Virginia Department of Revenue, State Tax Department, Property Tax Division (the "Tax Department" or "State") based on a mass appraisal system, state-wide. Antero filed this action, as well as the above-listed actions pending in several other counties, because the Tax Department failed to properly calculate the fair market value of its Marcellus wells for tax years 2018 and 2019, just as it did in tax years 2016 and 2017. The same arguments and legal issues are raised in this matter.

Certain variables are used by the State to value producing oil and natural gas wells, including operating expenses. Specifically, the Tax Department periodically circulates a survey by which it solicits data from oil and natural gas producing taxpayers regarding operating expenses for their wells, and based on that, the Tax Department determines the operating expense variables

used in its mass appraisal system. The amount of operating expenses applied to a well using the mass appraisal system is based on a percentage of the well's gross receipts not to exceed a maximum amount, and the percentage and maximum vary by the type of well (typical or conventional, Marcellus, etc.). The operating expense calculations are included in a natural resources "valuation variables" document that the Tax Department releases annually.

In addition to the valuation variables document, the Tax Department releases an annual administrative notice that lists the percentages and maximum amounts for operating expense calculations. In prior years, the Tax Department invited taxpayers to submit actual operating expenses that exceed the percentages and maximum amounts listed in the valuation variables document. The administrative notices from 2016 through 2019, unlike administrative notices from 2000 through 2015, however, did not include language that invites taxpayers to submit actual expenses, despite no changes to the West Virginia Code or the Tax Department's Legislative Rule that governs the valuation of producing natural gas wells.

For tax year 2019, the Tax Department calculates operating expenses at the lesser of 20% of gross receipts or \$175,000 for Marcellus wells (the "maximum amount" of \$175,000 of operating expenses per Marcellus well will be referred to as the "maximum amount" or "cap"). This cap-unduly restricts the amount of operating expenses that should be allowed for each well, and the imposition of a "cap" is not supported by the Tax Department's legislative rule regarding the valuation of producing oil and natural gas properties. The legislative rule, instead, requires that the Tax Department use "average annual industry operating expenses per well" in valuing producing wells, and does not authorize the Tax Department to "cap" operating expenses at a certain amount.

In this matter, Antero evaluated its actual operating expenses for calendar year 2017,¹ and determined that for Marcellus wells in the county, the amount of operating expenses that it was incurring significantly exceeded the percentages and maximum amounts set by the State.

Antero, like many mineral producers, generally reports its operating expenses to the Tax Department on a state-wide basis. For calendar year 2017, Antero's average operating expense per well was many times higher than the cap, including all operating expenses, gathering and compression expenses, processing expenses, and transportation expenses, necessary to get the gas to the point of sale. Antero reports its gross receipts based on the point of sale, and the allowed operating expenses should reflect the expenses incurred to get the gas to the point of sale. The goal of the State's calculation is to determine the value of the reserves. Under the current system, if two producers have the same production/reserves but one sells at the wellhead and the other sells to a market farther away, the reserves of the producer who sells to a farther market are valued substantially higher, which undermines the goal of the State's calculation. In sum, the Tax Department incorrectly and unfairly ignored the actual operating expenses and instead relied on the maximum calculations found in its valuation variables document and administrative notice. By failing to consider Antero's actual operating expenses, the Tax Department overvalued Antero's wells and did not assess them at their true and actual value.

Antero protested the Tax Department's valuation (as adopted by the Doddridge County Assessor) to the Doddridge County Commission sitting as the Doddridge County Board of Assessment Appeals (the "Board"). Antero presented clear and convincing evidence that the Tax Department failed to consider Antero's actual operating expenses in determining the valuation for the wells assessed for Doddridge County. Antero also proved by clear and convincing evidence

¹ For property tax purposes, the operating expense data from calendar year 2017 is used to value the wells for tax year 2019.

that, among other things, the State erroneously calculated average operating expenses at the lesser of 20% of gross receipts or \$175,000. To summarize, Antero readily established that the State grossly overvalued the fair market value of its wells by disallowing the deduction of actual expenses.

Despite the clear and convincing evidence produced by Antero, the Board made no adjustment to the Tax Department's valuation. Antero timely petitioned the Circuit Court for appeal of the Board's decision. For the reasons stated in the petition, Antero asked the Circuit Court to find that the Board incorrectly made no changes to the Tax Department's valuation; that the State's "cap" of \$175,000 in operating expenses be removed; and that the State's disallowance of actual expenses be struck down.

Moreover, on June 30, 2020, the Tax Department issued new guidance clarifying that West Virginia regulations actually allow deductions for actual expenses. *See* Exhibit A. The Tax Department explained in the guidance that the basis for the clarification was that the previous disallowance "overvalued" gas wells for tax purposes—the exact argument that Antero raises in this lawsuit and the pending matters before the Business Court. The Tax Department has nevertheless dictated, without explanation, that it will continue to disallow the deduction of actual expenses until tax year 2021. The Tax Department refusal to apply its new guidance to tax years with pending disputes—including 2016 and 2017, as well as 2018 and 2019—is contrary to the well-settled principle that a "mere clarification" of "existing" law applies retroactively. *See, e.g., Williams v. Dep't of Motor Vehicles*, 419 S.E.2d 474, 478 (W. Va. 1992).

Because the issues in this matter are complex and require specialized knowledge regarding taxation of oil and gas wells, specialized treatment will improve the expectation of a fair and

reasonable resolution of this matter. Accordingly, Antero requests that this matter be transferred to the Business Court Division.

II. APPLICABLE LEGAL STANDARD

West Virginia Trial Court Rule 29.06 provides that “[a]ny party . . . may seek a referral of Business Litigation to the [Business Court] Division by filing a Motion to Refer to the Business Court Division with the Clerk of the Supreme Court of Appeals of West Virginia.” W. Va. Tr. Ct. R. 29.06(a). “Business Litigation” is defined as follows:

(a) “Business Litigation”-- one or more pending actions in circuit court in which:

- (1) the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities; and
- (2) the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable; and
- (3) the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that *complex tax appeals are eligible to be referred to the Business Court Division.*

W. Va. Trial Ct. R. 29.04 (emphasis added).

III. ANALYSIS

This is a complex tax appeal that should be referred to the Business Court Division. The tax assessment issues in this case are technical, and they are precisely the type of issues that should

be referred to the Business Court Division. *See* Trial Ct. R. 29.04(a)(3) (providing that “complex tax appeals are eligible to be referred to the Business Court Division.”). Further, this case “involve[s] matters of significance to the transactions, operations, or governance between business entities,” and “presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.” *See* Trial Ct. R. 29.04(a)(1)-(2).

Here, Antero is challenging the Tax Department’s valuation of its Marcellus wells in Doddridge County. Before the Board, Antero submitted proof of its actual operating expenses, which it contends should be used in determining the value of its Marcellus wells. Antero also demonstrated that the State does not take into account Antero’s point-of-sale for the gas, or the operating expenses incurred to get the gas downstream to market. Analysis of these issues requires an understanding of Antero’s business model, particularly with regard to the point-of-sale, and an understanding of allowed operating expenses under Section 3.16 of Series 1J, Title 110 State Tax Department Legislative Rule for Valuation of Producing and Reserve Oil & Natural Gas for Ad Valorem Property Tax Purposes.

Antero also demonstrated to the Board that the Tax Department calculated an inaccurate “cap” with respect to allowed operating expenses. Antero explained that by artificially capping operating expenses at \$175,000, which is not permitted by the legislative rule, the State is grossly overvaluing the fair market value of Antero’s wells. Antero explained that, given Antero’s share of the horizontal production in West Virginia and what it knows to be its own average operating expense per well, it would not be mathematically possible for the State to arrive at an average of \$175,000 in operating expenses for the industry.

Thus, this tax appeal presents “issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.” *See* Trial Ct. R., 29.04(a)(2). In order to fairly and reasonably resolve these issues, the decision-maker should have familiarity with the tax code, the mechanisms used to value taxable property, the mass appraisal system used to assess oil and gas wells (including the methodology set forth in § 110-1J-4.1 is reflected in Tax Department’s 2017 Administrative Notice), as well as familiarity with allowable operating expenses under Section 3.16 of Series 1J, Title 110. Antero has placed clear and convincing evidence on the record in this case as to why its Marcellus wells have been overvalued. Antero asserts that specialized knowledge on the above-mentioned issues would improve the likelihood that the submitted documentation and testimony is fairly considered, and that a reasonable resolution of this controversy will result.

As discussed above, cases presenting identical issues regarding tax years 2016 and 2017 have already been transferred to and consolidated in the Business Court Division. And pending motions before the Business Court regarding the retroactive application of the Tax Department’s new guidance for the 2016 and 2017 tax years present complex, identical issues for the 2018 and 2019 tax years, as well. This Court’s precedents thus compel referring this case to the Business Court Division. *See, e.g., Lee Trace LLC v. Berkeley County Council as Board of Review and Equalization, et al.*, Case Nos. 11-AA-2 and 14-AA-1, 2015 WL 7628718 (W. Va. Nov. 20, 2015) (deciding Lee Trace LLC’s appeal of the Business Court Division’s decision related to its challenge of its property tax assessments, including that it did not receive proper notice of its right to appeal its assessment, that the assessor did not consider the requisite depreciation factors, and that the assessor failed to consider income information); *University Healthcare Foundation, Inc. v. Larry A. Hess, et al.*, Case Number 16-AA-3, Berkeley County Circuit Court, Business Court

Division (contending that a parcel of real property is exempt from *ad valorem* property tax); *John Skidmore Trucking, Inc. v. Mark W. Matkovich*, Case No. 14-C-27, Braxton County Circuit Court, Business Court Division (involving an assessment for sales and use tax related to services provided by an Enrolled Agent). The issues presented in this case similarly qualify for transfer under W. Va. Trial Court Rule 29.

Finally, because this case is in the early stages of litigation itself, referral to the Business Court would not prejudice the Respondents or waste judicial resources. Instead, it is in the interest of the parties and judicial economy for the above-referenced related cases to be consolidated and referred to the Business Court Division. Absent transfer and consolidation, a Business Court judge and four different circuit courts, comprising multiple judges, will have to hear and decide the same issue, possibly reaching inconsistent results. The pending motions before the Business Court further confirm that judicial economy favors transferring this case, as those motions present identical issues regarding the retroactive application of the new guidance to the 2018 and 2019 tax years. Thus, not only is this case exactly the type that should be referred to the Business Court Division, but consolidation in the Business Court Division will also promote judicial economy and consistency. For all of these reasons, this case should be referred to the Business Court Division.

In further support of this Motion, please find attached hereto an accurate copy of the operative petition, answers, and docket sheet. *See* Exhibit B.

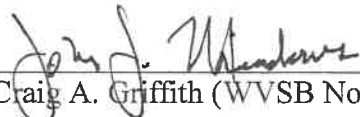

IV. CONCLUSION

WHEREFORE, the undersigned hereby moves, pursuant to W. Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 18th day of September 2020.

ANTERO RESOURCES CORPORATION,

By Counsel:

 by  10020

Craig A. Griffith (WVSB No. 8549)

John J. Meadows (WVSB No. 9442)

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Dave Hardy
Secretary of Revenue



STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

**IMPORTANT NOTICE TO PRODUCERS OF NATURAL GAS AND OIL
FOR PROPERTY TAX YEAR 2021**

Your natural gas and oil property tax return for the 2021 property tax year is due Monday, August 3, 2020. This is because the statutory return due date, August 1, 2020, falls on a Saturday this year, which automatically extends the due date to August 3, 2020.

The format and content of the return is like the returns you filed in prior years, except the dates in the form have been updated.

Please note that the return requires you to provide the gross receipts from **field line** sales of natural gas and oil. W. Va. C.S.R. § 110-IJ-3.8 reads:

"Gross receipts" means total income received from production on any well, at the field line point of sale, during a calendar year before subtraction of any royalties and/or expenses.

When sale of the natural gas or oil produced from a well is not sold in a field line sales transaction, then the gross proceeds of sales derived from the sales transaction needs to be adjusted to approximate the gross receipts you would have received had the sale been a field line sales transaction.

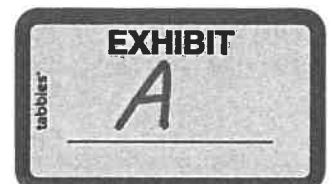
For many years, an attachment has been posted at the Property Tax webpage illustrating the field line point of sale concept. A copy of this attachment is attached.

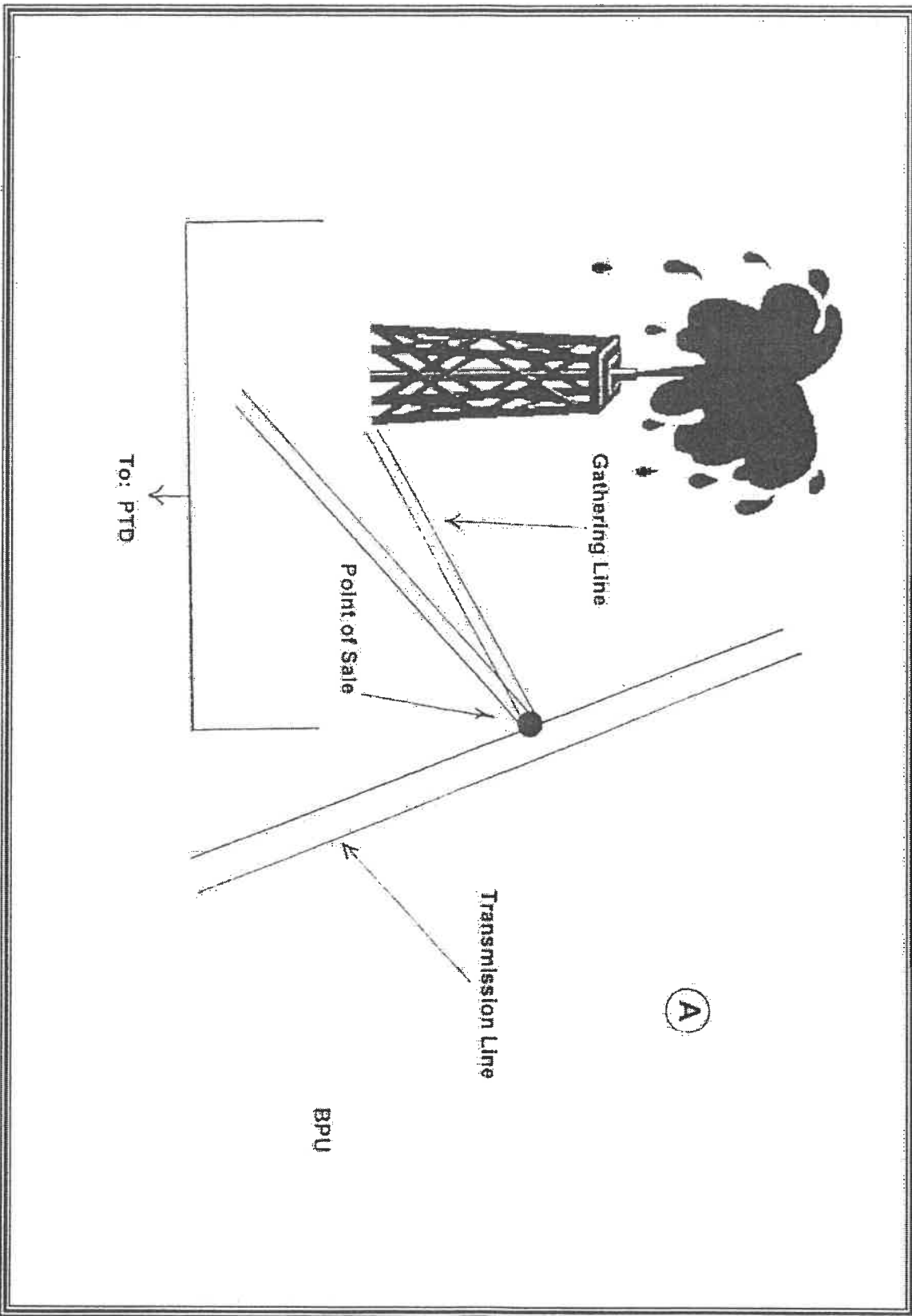
We recognize that due to deregulation of the natural gas industry not all gas is sold today in field line sales transactions. To avoid having your well overvalued for property tax purposes, it is important that you appropriately adjust actual gross proceeds of sale to properly reflect the gross receipts you would have received had the sales transaction been a field line point of sale.

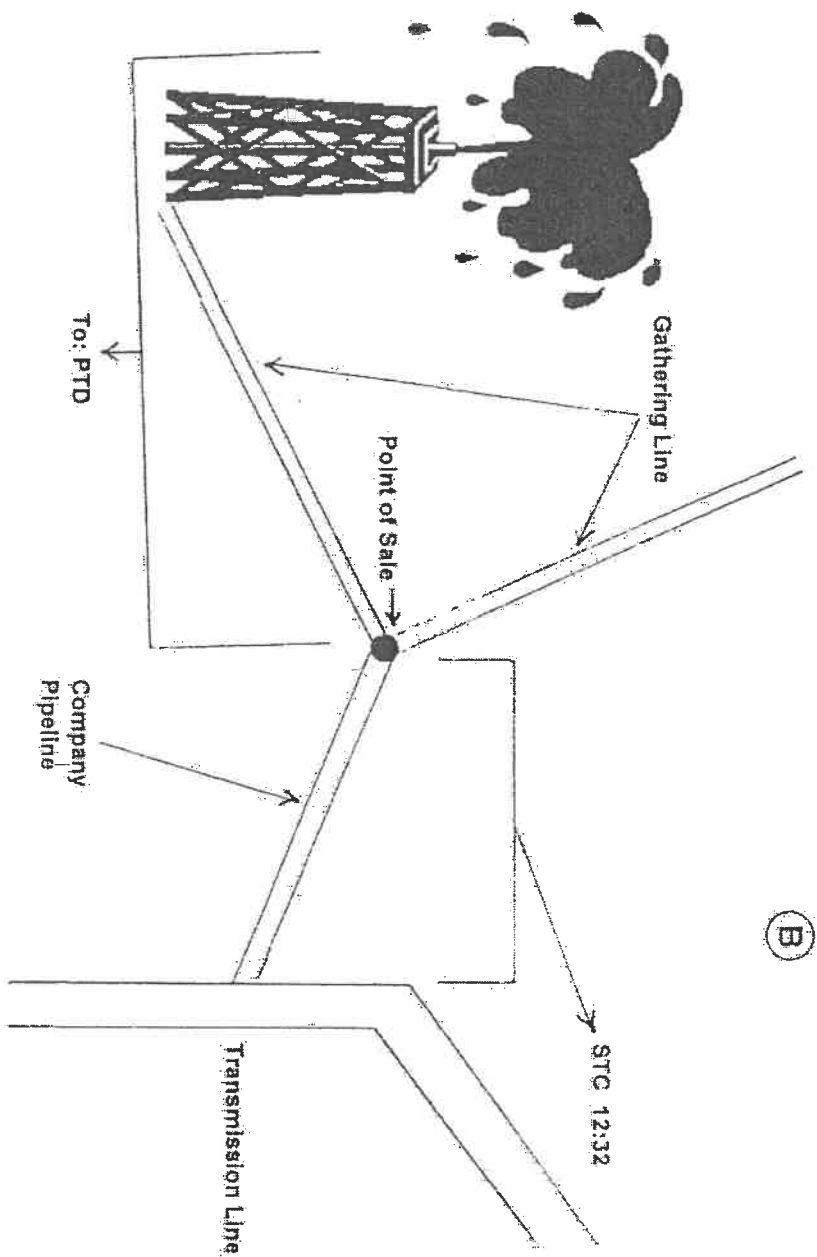
Sincerely yours,

A handwritten signature of Dale W. Steager in dark ink.

Dale W. Steager
State Tax Commissioner
June 30, 2020







(B)



(/DEFAULT.ASPX)

Civil
Case Information
Third Judicial Circuit of Doddridge County

19-AA-1

Judge: TIMOTHY L. SWEENEY

ANTERO RESOURCES CORPORATION VS. THE HONORABLE DALE STEAGER

Plaintiff(s)Plaintiff Attorney(s)

ANTERO RESOURCES COR

STEPTOE & JOHNSON PLLC

Defendant(s)Defendant Attorney(s)

DODDRIDGE COUNTY COMMISSION

SPONAUGLE, DAVID

STEAGER, DALE HON.

L. WAYNE WILLIAMS

Date Filed: 11/20/2019

Case Type:

Appealed: 0

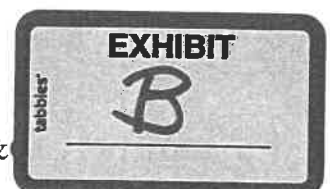
Final Order Date: N/A

Statistical Close Date: N/A

<u>Line</u>	<u>Date</u>	<u>Action / Result</u>
0001	11/20/2019	FILED CCIS
0002	11/20/2019	FILED PETITION OF PETITIONER ANTERO RESOURCES CORPORTION
0003	11/22/2019	FILED RETURN ON SERVICE ON DAVID SPONAUGLE(IP, DC DEP, 11/22/19)
0004	11/22/2019	FILED RETURN ON DODDRIDGE CO. COMMISSION (IP, DC DEP, 11/22/19)
0005	12/02/2019	FILED NOTICE OF APPEARANCE OF L.WAYNE WILLIAMS FOR DEFENDANTS
0006	12/04/2019	FILED AMENDED NOTICE OF APPEARANCE OF L. WAYNE WILLIAMS FOR DEFS
0007	12/05/2019	FILED CERTIFICATION OF THE 10/8/19 MINUTES OF DC BD. OF ASSESS.
0008	12/05/2019	FILED CERTIFICATION OF THE 10/15/19 ORDER OF THE DCC RULING
0009	12/12/2019	FILED ANSWER OF WV STATE TAX DEPT. & ASSESSOR SPONAUGLE & CCIS
0010	12/16/2019	FILED ANSWER & RESPONSE OF THE DC COMMISSION TO PETITION & CCIS

These materials have been prepared by the Office of the Clerk of the various Circuit Courts from original sources and data believed to be reliable. The information contained herein, however, has not been independently verified by the Office of the Clerk or Software Computer Group, Incorporated. The Office of the Clerk of the Circuit Courts and Software Computer Group, Inc. assume no liability for the accuracy, completeness, or timeliness of the information contained herein.

Software Computer Group | PO Box 27 | Fraziers Bottom WV 25082



IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

DODDRIDGE COUNTY
CIRCUIT COURT

Petitioner,

NOV 20 2019

v.

Civil Action No. 19-AA- 1

MICHELE D. BRITTON The Honorable Sweeney
CIRCUIT CLERK

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,

THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County, and

THE COUNTY COMMISSION OF DODDRIDGE COUNTY,
Sitting as a Board of Assessment Appeals,

Respondents.

PETITION OF PETITIONER ANTERO RESOURCES CORPORATION

I. INTRODUCTION

Antero Resources Corporation ("Antero") is a producer of natural gas throughout the state of West Virginia, with 241 Marcellus wells located in Doddridge County. Antero files this Petition seeking reversal of the erroneous decision of the Doddridge County Commission sitting as the Doddridge County Board of Assessment Appeals (the "Board"). By an order dated October 15, 2019, the Board upheld the West Virginia State Tax Department's (the "Tax Department" or "State") overstated valuation of Antero's producing oil and natural gas wells in Doddridge County. Antero seeks a correction of the Board's overvaluation of its producing oil and natural gas wells, in accordance with West Virginia law. As explained below, the Board failed to apply the West Virginia Supreme Court's decision in *Steager v. Consol*, __ W. Va. __, 832 S.E.2d 135 (2019), which requires application of a "singular monetary average" of operating expenses in valuing a producing oil and natural gas well.

Antero's wells are appraised by the Tax Department's Property Tax Division based on a mass appraisal system, state-wide. Certain variables are used by the State to value producing oil and natural gas wells, including, notably for this petition, operating expenses. For tax year 2019, the "singular monetary average" used by the Tax Department is \$175,000 for a producing horizontal Marcellus well, and should have been applied by the Board to amend the value of Antero's producing wells in Doddridge County.

On October 8, 2019, Antero protested the Tax Department's valuation (as adopted by the Doddridge County Assessor) to the Board. Antero presented clear and convincing evidence regarding the operating expenses to be used in valuing its wells for tax year 2019, including calculation based on application of the \$175,000 singular monetary average, with no application of an operating expense percentage, as required by the West Virginia Supreme Court of Appeals *Steager v. Consol.* The Board, however, made no adjustment to the Tax Department's valuation.

Antero timely petitions the Court for appeal of the Board's decision.

II. FACTUAL BACKGROUND

A. Antero's Property.

Antero owns 241 Marcellus wells in Doddridge County. (Certified Transcript of October 8, 2019 Hearing before the Doddridge County Board of Assessment Appeals, p. 6 [hereinafter "Hr'g Tr."]) and Hr'g Exhibit 1 (all exhibit references in this Petition will refer to exhibits submitted by Antero as Petitioner, unless otherwise indicated). See Exhibit A to this Petition. Antero pays significant taxes to Doddridge County for its oil and gas wells.

B. Antero's 2017 Operating Expenses.

Antero's protest documentation submitted to the Board for tax year 2019 was based on the Business Court Division's mandate for the *Steager v. Consol* matter that the Tax Department use

the operating expense percentage of 20% for Marcellus wells without application of the cap, and Antero's protest documentation filed with the Board based the valuation of its wells on application of the 20% operating expense percentage. Hr'g Tr. Exhibit 1 and 7. Antero also submitted proof of its actual operating expenses from 2017 to the Board to demonstrate the issues associated with application of a singular monetary average to calculate the value of a producing well. (Hr'g Tr., pp. 11:18-16:5; Hr'g Tr. Exhibits 4A and 4B). Antero's average operating costs for Marcellus wells is approximately 32% of gross receipts, or \$1,187,000. (Hr'g Tr. Exhibit 4A). Finally, Antero provided valuation based on application of a \$175,000 per well "singular monetary average," as required by the West Virginia Supreme Court of Appeals in *Steager v. Consol.* (Hr'g Tr. pp. 23:20-24:10; Hr'g Tr. Exhibit 7). Ultimately, the Board did not adjust the operating expenses used to value Antero's wells in Doddridge County for tax year 2019, even via application of the "singular monetary average" required by the West Virginia Supreme Court of Appeals.

C. The Tax Department's Calculation of Antero's Operating Expenses.

The Tax Department prepares annual natural resource property valuation variables for appraising oil and gas. Further, the Tax Department makes determination of those valuation variables pursuant to Series 1J of Title 110, a legislative rule of the Tax Department, promulgated pursuant to W. Va. Code §§ 11-1C-5(b), 11-1C-5a, and 11-1C-10(d). In order to determine the amount of Antero's operating expenses, and, in turn, the value of Antero's oil and gas wells, the Tax Department further is governed by Administrative Notices.

Tax Department Administrative Notice 2019-08 states that the Tax Department used a maximum operating expense amount of 20% of gross receipts derived from gas production, not to exceed \$175,000, for producing Marcellus wells. (Hr'g Tr. p. 41:19-23; Hr'g Tr. Exh. 10). For tax year 2019, the State appraised Antero's wells in Doddridge County at \$1,134,655,768, and this

valuation was made prior to the Supreme Court's decision in *Steager v. Consol*, with the 20% operating expense figure being used to calculate several Antero wells. Antero presented evidence to demonstrate that value of the wells based on the West Virginia Supreme Court's required "singular monetary average" of \$175,000 per well results in a value of \$1,131,174,949. Hr'g Tr. Exh. 7.

Antero timely noticed the Doddridge County Commission with its Notice of Protest on February 1, 2019. (Hr'g Tr. Exh. 1). The Doddridge County Commission, sitting as the Doddridge County Board of Assessment Appeals, held a hearing on October 8, 2019.

At the hearing, the Tax Department argued that the State's current procedures are in accordance with the legislative rules and the law; however, but did not introduce into evidence a value of Antero's wells based on the West Virginia Supreme Court's decision in *Steager v. Consol*. (Hr'g Tr. p. 38:6-23).

D. Antero's Expert Analysis and Testimony.

Antero's expert, Altus, a leading independent state and local tax firm, by Senior Manager Elizabeth Burg, testified before the Board on October 8, 2019, and showed that a correct application of the allowable operating expenses demonstrated that the Tax Department had erred in imposing an operating expense cap for tax year 2019. (Hr'g Tr., pp. 8:7-30:3). Burg submitted detailed charts and documentation of actual operating expenses, with numbers specific to Doddridge County. (Hr'g Exhibits 4A and 4B).

Burg explained that by artificially capping operating expenses at \$175,000, which the West Virginia Supreme Court of Appeals deemed as not permitted by the legislative rule, the State is grossly overvaluing the fair market value of Antero's wells. (Hr'g Tr., pp. 15:18-16:5). The State also failed to account for Antero's point-of-sale, and the operating expenses incurred to get the gas

downstream to market. (Hr'g Tr., pp. 13:19-16:5; 30:15-33:16; Hr'g Tr. Exhibits 4A, 4B, 5 and 6). Antero and other producers that provided information to the West Virginia Oil and Natural Gas Association for purposes of public comments submitted in 2018 volumetrically represented 52% of horizontal production in West Virginia for 2017, and the average working interest expense as a percentage of revenue for these producers was 33% per well. (Hr'g Tr. Exh. 9A).

Finally, Antero based its appeal on the Business Court's decision to require operating expenses for horizontal Marcellus wells to be calculated at 20% of gross production, without any cap. (Hr'g Tr., pp. 23:4-24:10, Hr'g Tr. Exh. 1 and Exh. 7). This approach would value Antero's wells at \$844,625,060. (Hr'g Tr., p. 23:13-22, Hr'g Tr. Exh. 1 and Exh. 7). Recognizing that the West Virginia Supreme Court of Appeals requires valuation to be based on use of a "singular monetary average," Altus also provided a valuation using a singular monetary average of \$175,000 per well, which results in an appraised value of \$1,131,174,949. (Hr'g Tr., p. 24:3-10, Hr'g Tr. Exh. 7)

E. Antero's Protest to the Doddridge County Board of Assessment Appeals.

On February 1, 2019, Antero submitted to the Doddridge County Assessor and the Doddridge County Commission sitting as the Board of Assessment Appeals an Application for Review of Property Assessment regarding its gas wells, and Antero appeared on October 8, 2019, by counsel, before the Board. (*See* W. Va. Code § 11-3-24). Antero hired a third-party court reporter to produce a certified transcript of the hearing at which Antero and the Tax Department presented evidence.¹ Exhibits introduced at the hearing and provided to the Board will be

¹ The Board did not provide a court reporter for the hearing. Thus, the transcript produced by the court reporter arranged by Antero is the official transcript for the hearing. Exhibit A is based on the transcript produced by Antero's court reporter, with transcript references throughout the petition based on the transcript produced by Antero's court reporter.

transmitted to the Court within thirty (30) days of filing this petition, as provided by West Virginia Code § 11-3-25. The original transcript of the proceeding is attached to Antero's Petition as Exhibit A. (See W. Va. Code § 58-3-4.)

By an Order dated October 15, 2019, the Board made no adjustment to the State Tax Department's valuation of Antero's gas wells for the 2019 tax year. (See Ex. B to Antero's Petition). Antero timely petitions this Court for relief from the Board's erroneous determination within thirty (30) days of the service of the Order, which occurred on October 22, 2019. (See W. Va. Code § 11-3-25).

III. ANALYSIS

All property in the State of West Virginia is required to "be assessed annually at its true and actual value[.]" W. Va. Code § 11-3-1. The West Virginia State Tax Commissioner² is charged with determining "the fair market value of all natural resource property in the State" and then providing the values to county assessors to use in assessing the property. W. Va. Code § 11-1C-10(d).

Pursuant to the responsibility to value producing mineral property and reserves, the Tax Commissioner promulgated Title 110, Series 1J of the West Virginia Code of State Rules, which explains the mechanisms to be utilized in valuing taxable property.

To determine the fair market value of producing oil and natural gas property, the Tax Department applies "a yield capitalization model to the net receipts (gross receipts less royalties paid less operating expenses) for the working interest. . . ." W. Va. Code St. R. § 110-1J-4.1. The methodology set forth in section 110-1J-4.1 is reflected in Tax Department's 2019

² Elsewhere in this petition, the Tax Commissioner is variously referred to as the Tax Department or simply the State. All terms refer to the same entity.

Administrative Notice, in which the Tax Commissioner states that the Tax Department primarily relies upon the income approach in valuing producing oil and gas property.

According to the Tax Department's legislative rule, the Tax Commissioner considers "operating expenses" to be "the "ordinary expenses which are directly related to the maintenance of production of natural gas and/or oil. These expenses do not include extraordinary expenses, depreciation, ad valorem taxes, capital expenditures, or expenditures relating to vehicles or other tangible personal property not permanently used in the production of natural gas or oil." Section 3.16 of Series 1J, Title 110 State Tax Department Legislative Rule for Valuation of Producing and Reserve Oil & Natural Gas for Ad Valorem Property Tax Purposes.

Antero's burden before the Board was to show by clear and convincing evidence that the Tax Department's valuation (and, hence, the County's assessment) of its gas well operating expenses was erroneous. Syl. pts. 5-6, *Stone Brooke Limited Partnership v. Sisinni*, 224 W. Va. 691, 688 S.E.2d 300 (2009). On appeal to this Court, the Court relies on the record developed before the Board and determines whether the challenged property valuation is supported by substantial evidence.³ See W. Va. Code § 58-3-4; syl. pts. 1-2, *Stone Brooke Limited Partnership*, 224 W. Va. at 691-2, 688 S.E.2d at 301-2.

In this case, the Board failed to amend the valuation of Antero's wells to comply with the West Virginia Supreme Court of Appeals' decision in *Steager v. Consol.* Accordingly, Antero

³ Furthermore, "[p]ursuant to *In Re Pocahontas Land Co.*, 172 W. Va. 53, 61, 303 S.E.2d 691, 699 (1983), once a taxpayer makes a showing that tax appraisals are erroneous, the Assessor is then bound by law to rebut the taxpayer's evidence." *Mountain Am., LLC v. Huffman*, 224 W. Va. 669, 786 n.23, 687 S.E.2d 768, 785 n.23 (2009). While the Court in *In Re Pocahontas Land Co.* suggested that a county assessor could meet that burden by introducing the State Tax Department's valuation, in this case, Antero showed that the State Tax Department's valuation itself is incorrect, so it was incumbent on the State Tax Department to rebut Antero's evidence.

now petitions this Court to find (1) that the Board incorrectly made no changes to the Tax Department's valuation and (2) that the value of Antero's Doddridge County gas wells for the 2019 tax year be set at \$1,131,174,949 based on the West Virginia Supreme Court's required "singular monetary average" of \$175,000 per well. Hr'g Tr. Exh. 7.

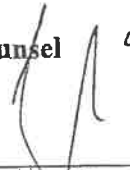
IV. CONCLUSION

WHEREFORE, Antero Resources Corporation respectfully requests that the Court:

- (i) Find that the Doddridge County Board of Assessment Appeals incorrectly upheld the valuation of Antero's Doddridge County gas wells by the West Virginia Department of Revenue, State Tax Department, Property Tax Division for the 2019 tax year;
- (ii) Correct the value of Antero's Doddridge County gas wells for the 2019 tax year at \$1,131,174,949, based on the West Virginia Supreme Court's required "singular monetary average" of \$175,000 per well; and
- (iii) Order such other relief as the Court deems appropriate.

ANTERO RESOURCES CORPORATION,

By Counsel



Craig A. Griffith (WVSB No. 8549)
John J. Meadows (WVSB No. 9442)
Steptoe & Johnson PLLC
Post Office Box 1588
Charleston, West Virginia 25326
Telephone (304) 353-8000
Facsimile (304) 353-8180

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 19-AA-1
Honorable Timothy L. Sweeney

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County,
THE COUNTY COMMISSION OF DODDRIDGE COUNTY,

Respondents.

ANSWER OF THE
WV STATE TAX DEPARTMENT AND
ASSESSOR SPONAUGLE TO
PETITION OF PETITIONER ANTERO RESOURCES

COME NOW the WV State Tax Department and The Honorable David Sponaule, Assessor of Doddridge County, (hereinafter, collectively Tax Department) in order to answer the Petition filed in the instant matter.

The Tax Department valued the producing Marcellus Shale horizontal wells located in Doddridge County in the fall of 2018 prior to the decision of the WV Supreme Court of Appeals in *Steager v. CONSOL Energy, Inc.* The Tax Department states that the wells currently before the Court must be valued as set forth by the Supreme Court in *Steager v. CONSOL Energy*.

The Tax Department answers the paragraphs as follows.

1. The Tax Department admits the allegation set forth in sentences 1, 2, and 3, of Paragraph 1 of the *Petition*. The Tax Department states that it valued the wells before the Court

prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth sentence 4 of Paragraph 1. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly.

2. The Tax Department admits the allegation set forth in sentences 1 and 2 of Paragraph 2 of the *Petition*. The Tax Department states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth sentence 3 of Paragraph 2. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly.

3. The Tax Department admits the allegation set forth in sentences 1 and 3 of Paragraph 3 of the *Petition*. The Tax Department states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth sentence 2 of Paragraph 3. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly.

4. The Tax Department admits the allegation set forth in Paragraph 4 of the *Petition*.

5. The Tax Department admits the allegation set forth in Paragraph 5 of the *Petition*.

6. The Tax Department lacks sufficient information to form an opinion regarding the truth or falsity of the allegation set forth in sentences 1 and 3 of Paragraph 6 of the *Petition*; consequently, those allegations are denied. The Tax Department denies that an individual producer's alleged actual operating expenses are a proper deduction as set forth in sentences 2 and 3 of Paragraph 6 of the *Petition*. The Tax Department admits the allegation set forth in sentence 5 of Paragraph 6 of the *Petition*.

7. Paragraph 7 of the *Petition* summarizes the law and legislative rules regarding the valuation of producing oil and gas wells; no response is required. To the extent that a response

may be applicable, the Tax Department states that the wells before the Court must be valued under the applicable statutory framework and the recent WV Supreme Court decision in *Steager v. CONSOL Energy*.

8. Sentence 1 of Paragraph 8 references Administrative Notice 2019-08; no response is required. To the extent that a response may be applicable, the Tax Department states that the wells before the Court must be valued under the applicable statutory framework and the recent WV Supreme Court decision in *Steager v. CONSOL Energy*. The Tax Department states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth in sentence 2 of Paragraph 8. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly. The Tax Department lacks sufficient information to form an opinion regarding the truth or falsity of the allegation set forth in sentences 3 of Paragraph 8 of the *Petition*; consequently, those allegations are denied.

9. The Tax Department admits the allegation set forth in Paragraph 9 of the *Petition*.

10. The Tax Department states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth Paragraph 10. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly.

11. The Tax Department admits that Elizabeth Burg, Senior Manager for Altus Group, testified and provided numerous charts and other documents as alleged in Paragraph 11 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 11 of the *Petition*.

12. The Tax Department admits that Elizabeth Burg, Senior Manager for Altus Group, testified as alleged in sentence 1 of Paragraph 12 of the *Petition*; the Tax Department denies the remaining allegations set forth in sentence 1 of Paragraph 12 of the *Petition*. The Tax Department denies that post-production expenses are a valid deduction for ad valorem tax purposes as alleged in sentences 2 and 3 of Paragraph 12 of the *Petition*.

13. The Tax Department lacks sufficient information to form an opinion regarding the truth or falsity of the allegation set forth in sentences 1 and 2 of Paragraph 13 of the *Petition*; consequently, those allegations are denied. The Tax Department states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth sentence 3 Paragraph 13. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly.

14. The Tax Department admits the allegation set forth in sentences 1, 2, and 4, of Paragraph 14 of the *Petition*. The Tax Department lacks sufficient information to form an opinion regarding the truth or falsity of the allegation set forth in sentences 2 of Paragraph 14 of the *Petition*; consequently, those allegations are denied.

15. The Tax Department admits the allegation set forth in Paragraph 15 of the *Petition*.

16. Paragraph 16 references W. Va. Code § 11-3-1; no response is required. To the extent that a response may be applicable, the Tax Department states that the wells before the Court must be valued under the applicable statutory framework, legislative rules and the recent WV Supreme Court decision in *Steager v. CONSOL Energy*. The Tax Department further states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth in Paragraph 16. In addition, the Tax Department states

Steager v. CONSOL Energy contrary to the allegations set forth in Paragraph 19. In addition, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly. The Tax Department further denies that post-production expenses are a valid deduction for ad valorem tax purposes as alleged in in Paragraph 19.

20. Paragraph 20 summarizes the law; no response is required. To the extent that a response may be applicable, the Tax Department states that legal questions will be decided by the Court.

21. The Tax Department states that it valued the wells before the Court prior to the WV Supreme Court decision in *Steager v. CONSOL Energy* contrary to the allegations set forth Paragraph 21. Furthermore, the Tax Department states that any wells which were not valued in accordance with *Steager v. CONSOL Energy* must be re-valued accordingly. The Tax Department denies the remaining allegations set forth in Paragraph 21 of the *Petition*.

22. The Tax Department denies every allegation set forth in the *Petition* which has not been specifically admitted.

WHEREFORE, the Tax Department prays The Honorable Court value the wells as set forth

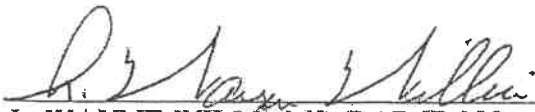
by statute, by the legislative rules, and by the WV Supreme Court in the recent decision of *Steager*
v. *CONSOL Energy* and for such additional relief as may be just and proper.

Respectfully submitted,

WEST VIRGINIA STATE TAX DEPARTMENT,
DAVID SPONAUGLE, ASSESSOR OF
DODDRIDGE COUNTY

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "L. Wayne Williams", is written over a horizontal line.

L. WAYNE WILLIAMS (BAR ID NO. 4370)
ASSISTANT ATTORNEY GENERAL
State Capitol Complex
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, WV 25305

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION – WEST VIRGINIA SUPREME COURT OF APPEALS

ANTERO RESOURCES CORPORATION,
Petitioner,

v.

Civil Action No. 19-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County, and
THE COUNTY COMMISSION OF DODDRIDGE COUNTY,
Respondents.

CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General, do hereby certify that the foregoing
“*Answer of the WV State Tax Department and Assessor Sponaugle to Petition of Petitioner
Antero Resources*” was served upon the following by depositing a copy of the same in the
United States Mail, via first-class postage prepaid, this 12th day of December, 2019, addressed as
follows:

Craig A. Griffith, Esq.
John J. Meadows, Esq.
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588
Counsel for Petitioner

Jonathon Nicol, Esq.
Lindsay Gainer, Esq.
Kay Casto & Chaney, PLLC
P.O. Box 2013
Charleston, WV 25327


L. WAYNE WILLIAMS

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,
Petitioner,

v.

Civil Action No. 19-AA-1
Judge Sweeney

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County, and
THE COUNTY COMMISSION OF DODDRIDGE COUNTY,
Sitting as a Board of Assessment Appeals,

Respondents.

**ANSWER AND RESPONSE OF THE COUNTY COMMISSION
OF DODDRIDGE COUNTY TO PETITION**

COMES NOW the County Commission of Doddridge County, sitting as a Board of Assessment Appeals (the "Commission"), by and through its counsel, Kay Casto & Chaney PLLC, by Jonathan Nicol, in order to Answer and respond to the *Petition of Petitioner Antero Resources Corporation* ("Petition") filed in this matter. The Petition was filed with the Circuit Court of Doddridge County. The paragraphs of the Petition are not individually numbered as required pursuant to the West Virginia Rules of Civil Procedure Rule 10; nevertheless, the Commission responds to the Petition as if the paragraphs were numbered as required as follows:

General Response

This responsive pleading has been prepared, served, and filed by counsel for the Commission under the West Virginia Rules of Civil Procedure.

As permitted by Rule 8(e)(2), defenses to claims made in the Petition are as follows:

1. The Commission admits that Antero Resources Corporation ("Antero") is a producer of natural gas in the state of West Virginia with Marcellus wells located in Doddridge County and that it filed this Petition. The Commission denies that its decision in this matter is

erroneous in any manner as alleged in unnumbered Paragraph 1 of the Petition. The Commission admits that Antero's wells need to be valued as required by the West Virginia Supreme Court's decision in *Steager v. Consol*, ____ W.Va. ____, 832 S.E.2d 135 (2019), which requires application of a "singular monetary average" of operating expenses in valuing a producing oil and natural gas well. For Antero's wells, the "singular monetary average" of operating expenses is \$175,000.00 per well. Further, the Commission denies all remaining allegations contained in unnumbered Paragraph 1 of the Petition.

2. Antero failed to produce sufficient evidence to convince the Commission to adopt Antero's valuations of its wells. The Commission admits the remaining allegations contained in unnumbered Paragraph 2 of the Petition.

3. As for the allegations contained in unnumbered Paragraph 3 of the Petition, the Commission denies that Antero presented clear and convincing evidence regarding the valuation of its wells.

4. The Commission does not have sufficient knowledge to either admit or deny the allegations contained in unnumbered Paragraph 4 of the Petition.

5. The Commission admits the allegations contained in unnumbered Paragraph 5 of the Petition.

6. As for the allegations contained in unnumbered Paragraph 6 of the Petition, Antero is not entitled to deduct its "actual operating expenses." Further, Antero failed to produce sufficient evidence to convince the Commission to adopt Antero's valuations of its wells.

7. The Commission admits the allegations contained in unnumbered Paragraph 7 of the Petition.

8. Antero failed to produce sufficient evidence to convince the Commission to adopt Antero's valuations of its wells. The Commission admits the remaining allegations contained in unnumbered Paragraph 8 of the Petition.

9. The Commission admits the allegations contained in unnumbered Paragraph 9 of the Petition.

10. The Commission admits the allegations contained in unnumbered Paragraph 10 of the Petition but further states that the Tax Department testified it can make the valuation adjustments to Antero's wells as required by *Steager v. Consol.*

11. As for the allegations contained in unnumbered Paragraph 11 of the Petition, the Commission admits Elizabeth Burg testified before the Board on October 8, 2019. Antero is not entitled to deduct its actual operating expenses when determining the valuation of its wells.

12. As for the allegations contained in unnumbered Paragraph 12 of the Petition, Antero is not entitled to deduct its point-of-sale and the operating expenses incurred to get its gas downstream to market.

13. As for the allegations contained in unnumbered Paragraph 13 of the Petition, the Business Court's valuation method was reversed by *Steager v. Consol.* The Commission admits that Altus also provided a valuation using a singular monetary average of \$175,000 per well, but Antero failed to produce sufficient evidence to convince the Commission to adopt Antero's valuations of its wells.

14. Except for not having knowledge of when exhibits introduced at the hearing will be transmitted to this Court, the Commission admits the remaining allegations contained in unnumbered Paragraph 14 of the Petition.

15. The Commission admits that by an Order dated October 15, 2019, it made no adjustment to the State Tax Department's valuation of Antero's gas wells for the 2019 tax year, but states it has no knowledge to admit or deny the remaining allegations contained in unnumbered Paragraph 15 of the Petition.

16. The Commission admits the allegations contained in unnumbered Paragraph 16 of the Petition.

17. The Commission admits the allegations contained in unnumbered Paragraph 17 of the Petition.

18. The Commission admits the allegations contained in unnumbered Paragraph 18 of the Petition.

19. The Commission admits the allegations contained in unnumbered Paragraph 19 of the Petition.

20. The Commission admits that Antero's burden before the Board was to show by clear and convincing evidence that the Tax Department's valuation of its gas well operating expenses was erroneous, but states it has no knowledge to admit or deny the remaining allegations contained in unnumbered Paragraph 20 of the Petition.

21. The Commission admits it did not amend the valuation of Antero's wells and denies the remaining allegations contained in unnumbered Paragraph 21 of the Petition.

22. The Commission denies that Antero is entitled to the Relief sought in the WHEREFORE Paragraph of the Petition.

23. The Commission denies each and every allegation in the Petition which has not been specifically admitted herein.

First Defense

The Petition, as filed, fails to state a claim against the Commission upon which relief can be granted.

Second Defense

Pursuant to West Virginia Rules of Civil Procedure 9(d), the Commission, which sat as a Board of Assessment Appeals in the underlying matter, hereby avers that all its official acts, including but not limited to the denial of the appeal of certain tax assessments by the Petitioner herein, were done in compliance with law.

Third Defense

Valuation of property by the Tax Department is presumed to be correct. It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear.” Syl. Pt. 1, *In re Tax Assessment Against Pocahontas Land Co.*, 172 W.Va. 53, 303 S.E.2d 691 (1983). Taxpayers challenging a property valuation by the Tax Department must prove by “clear and convincing evidence” that the Tax Department’s valuation is wrong. See Syl. Pt. 5, *In re Tax Assessment of Woodlands*, 672 S.E.2d 150 (2008) (“A taxpayer challenging an assessor’s tax assessment must prove by clear and convincing evidence that such tax assessment is erroneous”). Here, Antero failed to meet its burden of proof in the underlying matter.

Fourth Defense

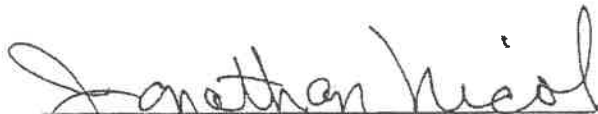
The Commission property affirmed the Tax Departments valuation after finding that Antero failed to produce sufficient evidence to convince the Commission to adopt Antero's valuations of its wells.

WHEREFORE, the County Commission of Doddridge County, sitting as a Board of Assessment Appeals, pray this Honorable Court dismiss the Petition with prejudice or in the alternative, establish or fix the valuation of Antero's wells after first obtaining the Tax Department's values of the wells using the requirements of *Steager v. Consol*, which requires application of a "singular monetary average" of operating expenses in the amount of \$175,000.00 per well, and for such additional relief as the Court deems appropriate and just.

Respectfully submitted,

THE COUNTY COMMISSION OF
DODDRIDGE COUNTY, Sitting as
A Board of Assessment Appeals

By Counsel,



JONATHAN NICOL (WVSB#5186)
KAY CASTO & CHANEY PLLC
707 Virginia Street, E. Suite 1500
P.O. Box 2031
Charleston, West Virginia 25327

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,
Petitioner,

v.

Civil Action No. 19-AA-1
Judge Sweeney

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County, and
THE COUNTY COMMISSION OF DODDRIDGE COUNTY,
Sitting as a Board of Assessment Appeals,

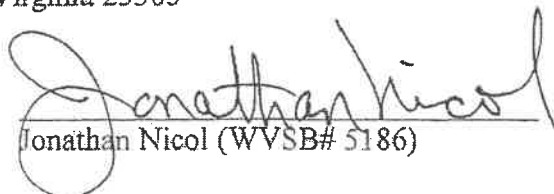
Respondents.

CERTIFICATE OF SERVICE

I, Jonathan Nicol, counsel for Respondent, The County Commission of Doddridge County, sitting as a Board of Assessment Appeals, do hereby certify that the ANSWER AND RESPONSE OF THE COUNTY COMMISSION OF DODDRIDGE COUNTY TO PETITION was served by first class mail, postage pre-paid on the following on this 12th day of December, 2019, to-wit:

Craig A. Griffith
John J. Meadows
Counsel for the Petitioner
By U. S. Mail, Postage Prepaid, to,
Steptoe & Johnson
Post Office Box 1588
Charleston, West Virginia 25326

L. Wayne Williams, Esquire
Assistant Attorney General
By U.S. Mail, Postage prepaid to:
Office of the Attorney General
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, West Virginia 25305


Jonathan Nicol (WVSB# 5186)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Doddridge County Circuit Court
Civil Action No. 19-AA-1
The Honorable Judge Sweeney

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,

THE HONORABLE DAVID SPONAUGLE,
Assessor of Doddridge County, and

THE COUNTY COMMISSION OF DODDRIDGE COUNTY,
Sitting as the Board of Assessment Appeals,

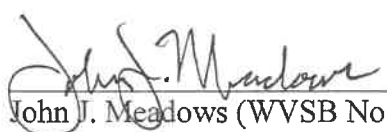

Respondents.

CERTIFICATE OF SERVICE

I, John J. Meadows, do hereby certify that on this 18th day of September 2020, I have served the foregoing "*Antero Resources Corporation's Motion to Refer Case to Business Court Division,*" with attachments by first class mail to all counsel of record at the addresses provided below:

L. Wayne Williams, Esquire
-Assistant Attorney General
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, WV 25305

Jonathon Nicol, Esquire
Kay Casto & Chaney PLLC
P.O. Box 2013
Charleston, WV 25327

 by 
John J. Meadows (WVSB No. 9442) 12020