

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

**Tyler County Circuit Court
Civil Action No. 18-AA-1
The Honorable Judge Cramer**

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

**THE HONORABLE LISA JACKSON,
Assessor of Tyler County, and**

**THE COUNTY COMMISSION OF TYLER 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 2018, 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 19-AA-1, Doddridge 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 2018 in Tyler County, and the above-listed matters involve the same arguments for tax years 2018 and 2019 in 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 2018, 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 2016,¹ 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 2016, 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 Tyler County Assessor) to the Tyler County Commission sitting as the Tyler 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 Tyler County. Antero also proved by clear and convincing evidence that, among other

¹ For property tax purposes, the operating expense data from calendar year 2016 is used to value the wells for tax year 2018.

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 Tyler 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.

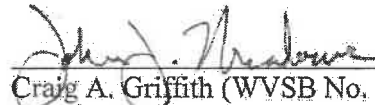

IV. CONCLUSION

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)

Steptoe & Johnson PLLC

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Charleston, West Virginia 25326

Telephone (304) 353-8000

Facsimile (304) 353-8180

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.

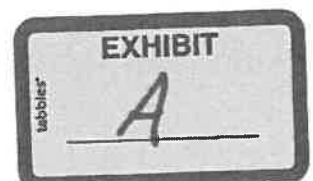
For many years, an attachment has been posted at the Property Tax webpage illustrating the field line point of sale concept. A copy of this attachment is attached.

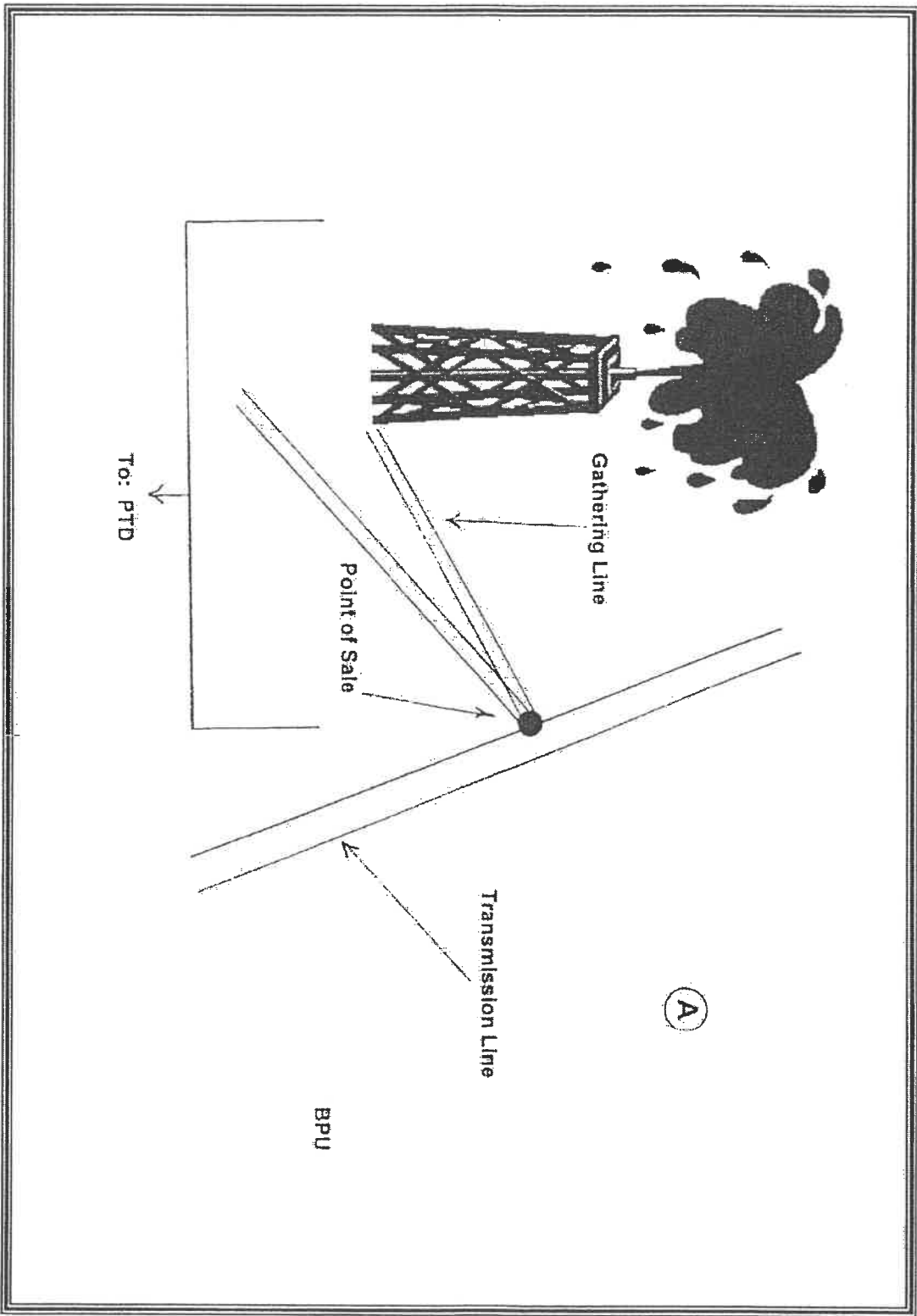
We recognize that due to deregulation of the natural gas industry not all gas is sold today in field line sales transactions. To avoid having your well overvalued for property tax purposes, it is important that you appropriately adjust actual gross proceeds of sale to properly reflect the gross receipts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

Sincerely yours,

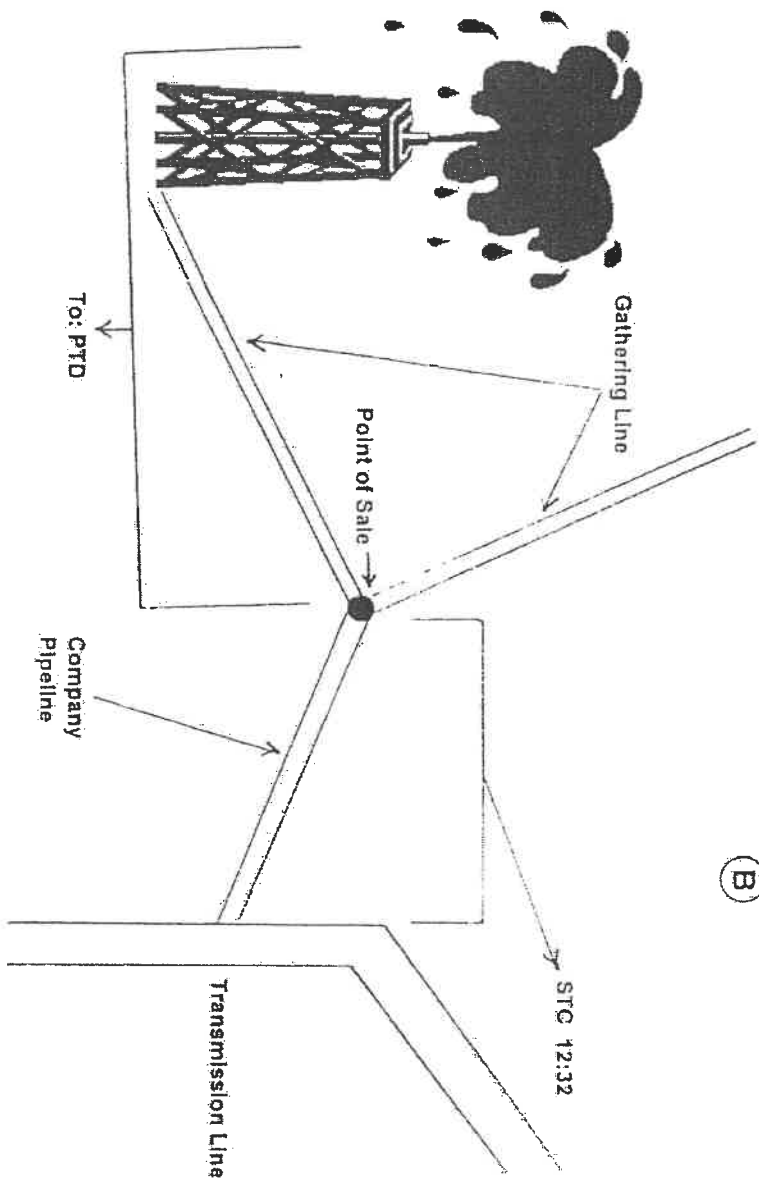
A handwritten signature of Dale W. Steager in cursive script.

Dale W. Steager
State Tax Commissioner
June 30, 2020





(B)



CASE#: 18-AA-1

Sub Code:

Date Opened: 12/12/2018
Date Printed: 09/11/2020

JUDGE: JEFFREY D. CRAMER

Plaintiff: ANTERO RESOURCES CORPORATION

Defendant: DALE STEAGER

Pro Attorney: CRAIG GRIFFITH

Def Attorney: D. LUKE FURBEE

Page	Date	Memorandum	Account#	Earned	Collected	Balance
1	12/12/2018	FILING FEE PAID				
2	12/12/2018	F: CIVIL CASE INFORMATION STATEMENT				
3	12/12/2018	F: PETITION OF PETITIONER ANTERO RESOURCES CORPORATION WITH EXHIBITS				
4	12/12/2018	I: SUMMONS & PETITION WITH EXHIBITS TO STC FOR SERVICE ON LISA JACKSON & COUNTY COMMISSION OF TYLER COUNTY (WITH S&J CHECK FOR \$50)				
5	12/12/2018	I: SUMMONS & PETITION WITH EXHIBITS TO STEPTOE & JOHNSON (IN OFFICE) FOR PERSONAL SERVICE ON DALE STEAGER, TAX COMMISSIONER				
6	12/12/2018	F: ORG RETURN SHOWING SERV ON LISA JACKSON ON 12/13/18 BY STC				
7	12/12/2018	F: ORG RETURN SHOWING SERV ON TYLER COUNTY COMMISSION ON 12/13/18 BY STC				
8	12/13/2018	I: SERV POSTCARD TO S & J				
9	12/13/2018	F: NOTICE OF APPEARANCE BY D. LUKE FURBEE ON BEHALF OF COUNTY COMMISSION OF TYLER COUNTY				
10	12/13/2018	F: MOTION TO SUBSTITUTE PARTY UPON DEATH RE JACKSON L. HAYES				
11	12/14/2018	F: CERTIFICATION FROM TYLER COUNTY CLERK THAT WRITING IS TRUE & ACCURATE COPY AS APPEARS OF RECORD IN TYLER COUNTY OFFICE IN (NO) BOOK AT (NO) PAGE				
12	12/17/2018	F: MOTION TO QUASH OR AMEND SUMMONS BY THE COUNTY COMMISSION OF TYLER COUNTY				
13	12/17/2018	F: NOTICE OF HEARING (1/10/2019 @ 10:30AM)				
14	12/17/2018	F: NOTICE OF BONA FIDE DEFENSE BY L. WAYNE WILLIAMS ON BEHALF OF LISA JACKSON, ASSESSOR OF TYLER COUNTY				
15	12/18/2018	F: NOTICE OF BONA FIDE DEFENSE OF BEHALF OF LISA JACKSON, ASSESSOR OF TYLER COUNTY				
16	12/18/2018					
17	12/18/2018					
18	12/20/2018					
19	12/20/2018					
20	12/20/2018					
21	12/27/2018					
22	12/27/2018					
23	12/27/2018					
24	12/27/2018					

Received Time Sep. 11, 2020 11:12AM No. 0440

EXHIBIT

B

CASE#: 18-AA-1

Sub Code:

Date Opened: 12/12/2018

Date Printed: 09/11/2020

JUDGE: JEFFREY D. CRAMER

Plaintiff: ANTERO RESOURCES CORPORATION

Defendant: DALE STEAGER

Pro Attorney: CRAIG GRIFFITH

Def Attorney: D. LUKE FURBEE

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>	<u>Account#</u>	<u>Earned</u>	<u>Collected</u>	<u>Balance</u>
25	01/08/2019	F:RESPONSE OF WV STATE FAX DEPARTMENT AND ASSESSOR JACKSON REGARDING				
26	01/08/2019	THE TYLER COUNTY COMMISSION'S MOTION TO QUASH OR MODIFY SUMMONS				
27	01/08/2019	F:LETTER FROM STEPTOE & JOHNSON ATTACHING SUMMONS FOR TYLER COUNTY				
28	01/08/2019	COMMISSION				
29	01/09/2019	F:AMENDED NOTICE OF APPEARANCE OF L. WAYNE WILLIAMS ON BEHALF OF				
30	01/09/2019	LISA JACKSON, ASSESSOR OF TYLER COUNTY				
31	01/09/2019	F:EMAIL TO AND FROM STEPTOE & JOHNSON RE SUMMONS				
32	01/09/2019	I:SUMMONS TO STEPTOE & JOHNSON FOR SERVICE ON THE COUNTY COMMISSION				
33	01/09/2019	OF TYLER COUNTY				
34	01/11/2019	F:CIVIL CASE INFORMATION STATEMENT				
35	01/11/2019	F:ANSWER OF WEST VIRGINIA STATE TAX DEPARTMENT AND THE HONORABLE				
36	01/11/2019	LISA JACKSON TO PETITION				
37	01/14/2019	E:ORDER DENYING MOTION TO QUASH AS MOOT; CC TO FURBEE, WILLIAMS &				
38	01/14/2019	GRIFFITH				
39	01/17/2019	F: ORG RETURN SHOWING SERV ON DALE STEAGER BY ALICIA CLARK ON				
40	01/17/2019	1/2/19 BY BRIDGET U. PHILLIPS, A CREDIBLE PERSON				
41	01/18/2019	I: SERV POSTCARD TO S & J				
42	01/22/2019	F:RETURN SHOWING SERVICE ON TYLER COUNTY COMMISSION BY STC ON				
43	01/22/2019	1/22/2019; COPY TO ATTY MEADOWS				

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 18-AA-⁴

The Honorable *Jeffrey D. Cramer*

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,

THE HONORABLE JACKSON L. HAYES,
Assessor of Tyler County, and

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

FILED

NOV 12 2018

Candy L. Warner
Tyler Co. Circuit Clerk

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 42 Marcellus wells located in Tyler County. Antero files this Petition seeking reversal of the erroneous decision of the Tyler County Commission sitting as the Tyler County Board of Assessment Appeals (the “Board”). By order dated November 27, 2018, 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 Tyler County. Antero seeks a correction of the Board’s overvaluation of its producing oil and natural gas wells, in accordance with West Virginia law.

Those 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. 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 2018 administrative notices, 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.

In this matter, Antero evaluated its actual operating expenses for calendar year 2016, 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. For property tax purposes, the operating expense data from calendar year 2016 is used to value the wells for tax year 2018.

When the Tax Department valued Antero's gas well values for tax year 2018, it failed to adhere to its own regulations that direct how it is to consider actual operating expenses. Antero, like many mineral producers, generally reports its operating expenses to the Tax Department on a state-wide basis. For 2016, Antero's average operating expense per Marcellus well was 38% of gross receipts, or \$946,500, which includes all operating expenses, gathering and compression expenses, processing expenses, and transportation expenses, incurred 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.

For tax year 2018, 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 alternatively throughout this petition 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 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.

On October 30, 2018, Antero protested the Tax Department's valuation (as adopted by the Tyler County Assessor) to 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 Tyler County. Antero presented a complete analysis of its actual operating expenses from the state and local tax firm Altus Group US, Inc. ("Altus"), supported by testimony from an Altus Manager, Elizabeth Burg, that correctly applies the approach to arrive at allowable operating expenses. Antero also proved by clear and convincing evidence that the State erroneously calculated average operating expenses at the lesser of 20% of gross receipts or \$175,000. Antero, the largest producer in West Virginia, at 40% of market share, has actual operating expenses per Marcellus well of 38% of gross receipts or \$946,500. Under these circumstances, it is not mathematically possible for the average operating expenses for the industry to be \$175,000. The Board, however, made no adjustment to the Tax Department's valuation.

Antero timely petitions the Court for appeal of the Board's decision. As explained below, the Tax Department has abused its discretion by failing to consider Antero's actual and allowable operating expenses in a manner contrary to the statutes, regulations and official releases from the Tax Department governing valuation of personal property. Moreover, the Tax Department has failed to support its valuation with substantial evidence. Antero, on the other hand, presented clear and convincing evidence for its allowable operating expenses to be used in valuing its wells for tax year 2018.

II. FACTUAL BACKGROUND

A. Antero's Property.

Antero owns 42 Marcellus wells in Tyler County. (Certified Transcript of October 30, 2018 Hearing before the Tyler County Board of Assessment Appeals, p. 3 [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 Tyler County for its oil and gas wells.

B. Antero's 2016 Operating Expenses.

Antero completed the Tax Department's calendar year 2014 survey related to operating expenses. (Hr'g Exhibit 6). However, the survey asked for expenses related to lifting the gas out of the ground only, not gathering and compression, transportation, or processing costs, which are incurred to get the gas to the market. (Hr'g Tr., pp. 65:12-66:9; Hr'g Tr. Exh. 6). The Tax Department's survey information for horizontal Marcellus wells pertained almost solely to typical lease operating expenses and was based on prior surveys used for conventional wells. (Hr'g Tr. pp. 65:12-66:9). No line items were provided for gathering and compression, processing or transportation. (Hr'g Tr. pp. 65:12-66:9). If such expense categories had been included in the survey, Antero would have calculated and listed those substantial expenses, and the Tax Department's calculations would have been substantially different, given that Antero is the largest producer for Marcellus wells in West Virginia and represents approximately 40% of the Marcellus gas production statewide. (Hr'g Tr. Exh. 12). Altus testified that Antero and other producers that provided information to the West Virginia Oil and Natural Gas Association for purposes of public comments submitted in 2017 volumetrically represented 51% of horizontal production in West Virginia for calendar year 2016, and that these producers averaged

operating expenses of \$814,000 per well. (Hr’g Tr., p. 29:1-23; Hr’g Tr. Exh. 10(A)). Under these circumstances, it would be mathematically impossible to calculate an average of \$175,000 in operating expenses for the industry unless the other 49% of producers had *negative* operating expenses. (Hr’g Tr., pp. 29:24-30:18; Hr’g Tr. Ex. 12). Accordingly, the State’s cap of \$175,000 in operating expenses does not truly represent the average operating expenses for the industry.

The Tax Department attempted to remedy its faulty 2014 survey via a calendar year 2017 survey that requested information pertinent to horizontal wells in West Virginia, and the current state of the oil and gas industry. (Hr’g Tr., pp. 25:17-26:17; Hr’g Tr. Exh. 7). However, no change was made to the 20% operating expense percentage or the \$175,000 cap following submission of responses to the survey.

For the 2017 tax year, the Tax Department increased the allowed operating expenses cap from \$150,000 to \$175,000 based on public comments received in 2016, and the \$175,000 cap was also used for tax year 2018. The State’s calculation remains erroneous, however, because it relies on data from the faulty 2014 survey, and because the State disregarded the operating expenses provided by WVONGA in calculating the new “average” operating expense. (Hr’g Tr., p. 26:10-17; Hr’g Tr. Exh. 10(B)).

Furthermore, the Tax Department does not attempt to differentiate between different business models in its survey, administrative notice, or the legislative rule. As a result, certain producers are penalized through an understated amount of operating expenses. As required by the State Tax Department, 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. Requiring gross receipts to be reported based on the point of sale, while not recognizing the

substantial expenses incurred to get the gas to the point of sale, results in overvaluation of the produced natural gas.

Antero submitted proof of its actual operating expenses from 2016 to the Board for consideration for tax year 2018. (Hr'g Tr., pp. 6-55; Hr'g Tr. Exhibits 4 and 7). Antero's average operating costs for Marcellus wells is approximately 39% of gross receipts, or \$946,500. (Hr'g Tr. pp. 23:24-24:5). Ultimately, the Board did not adjust the operating expenses used to value Antero's wells in Tyler County for tax year 2018.

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.

In the past, the Tax Department included a statement in its Administrative Notices indicating that it was willing to consider actual operating expenses if a taxpayer thought that the value of their wells was overstated. (Hr'g Tr. pp. 26:18-27:9; Hr'g Tr. Exh. 5B). In 2016, the Tax Department decided that it would no longer consider actual operating expenses, despite no change in the law. Accordingly, its 2018 Administrative Notice for operating expenses included no language regarding actual operating expenses. (Hr'g Tr. pp. 26:18-27:9; Hr'g Tr. Exh. 5A).

The State calculates the allowed operating expenses at the lesser of 20% of gross receipts, or \$175,000, for Marcellus Wells. (Hr'g Tr. Exh. 8(B)). Antero's operating expenses for Marcellus wells are on average \$946,500. Due to the State's failure to take into account

Antero's actual operating expenses, the value of Antero's wells is significantly overstated. The State appraised Antero's wells in Tyler County at \$382.4 million, whereas Antero, using the State's mass appraisal model and Antero's actual operating expenses, appraised them at \$264.5 million. (Hr'g Tr. pp. 30:19-31:15; Hr'g Tr. Exh. 1). Antero also hired Moss Adams, an independent accounting and consulting company with expertise in oil and gas property tax valuations, to appraise the true and actual value of the wells. Moss Adams appraised the wells at \$203.9 million. (Hr'g Tr. 32:9-33:6; Hr'g Tr. Exh. 15).

Antero timely noticed the Tyler County Commission with its Notice of Protest on February 13, 2018. (Hr'g Tr. Exh. 1). The Tyler County Commission, sitting as the Tyler County Board of Assessment Appeals, held a hearing on October 30, 2018.

At the hearing, the Tax Department offered no credible evidence as the basis for its refusal to accept Antero's calculation of its operating expenses, except to argue that the State's current procedures are in accordance with the legislative rules and the law. (Hr'g Tr. pp. 56-66).

D. Antero's Expert Analysis and Testimony.

Antero's expert, Altus, a leading independent state and local tax firm, by Manager Elizabeth Burg, testified before the Board on October 30, 2018, and showed that a correct application of the allowable operating expenses demonstrated that the Tax Department had erred by failing to consider the operating expenses documented by Antero. (Hr'g Tr., pp. 6-55). Burg submitted detailed charts and documentation of actual operating expenses, with numbers specific to Tyler County. (Hr'g Exhibits 4 and 7).

Altus 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. (Hr'g Tr., pp. 6:22-7:12). The State also failed to take into account Antero's

point-of-sale, and the operating expenses incurred to get the gas downstream to market. (Hr'g Tr. pp. 9:7-25:5; Hr'g Tr. Exhibits 3, 4 and 13). Altus testified that Antero and other producers that provided information to the West Virginia Oil and Natural Gas Association for purposes of public comments submitted in 2017 volumetrically represented 51% of horizontal production in West Virginia for 2016, and that these producers averaged operating expenses of \$814,000 per well. (Hr'g Tr., p. 29:1-23, Hr'g Tr. Exh. 10(A)). Altus explained that, under these circumstances, it would be mathematically impossible to get to an average of \$175,000 in operating expenses for the industry unless the other 49% of producers had *negative* operating expenses. (Hr'g Tr., pp. 29:24-30:18; Hr'g Tr. Exh. 12).

Burg also testified that Antero hired Moss Adams to appraise its wells in Tyler County. (Hr'g Tr., pp. 32:9-33:6; Hr'g Tr. Exh. 15). Burg explained that Moss Adams found that the Tax Department's valuation did not properly account for the decline rate or actual operating costs of the wells at issue, and used a different discount rate than the rate used by the Tax Department. Moss Adams appraised the fair market value of Antero's Tyler County wells at \$203.9 million, while the State appraised them at \$382.4 million. (Hr'g Tr., pp. 32:9-33:6; Hr'g Tr. Exh. 15).

Finally, Altus testified that, while Moss Adams's valuation is the fair market value of the wells, an alternative approach would be to calculate operating costs as 20% of gross production, without any cap. Altus stressed that this method would still overstate the fair market value of the wells, but that 20%, without a cap, is a reasonable resolution. (Hr'g Tr., pp. 31:16-32:8, Hr'g Tr. Exh. 14). This approach would value Antero's wells at approximately \$268.3 million. (Hr'g Tr., pp. 31:16-32:8, Hr'g Tr. Exh. 14). This methodology was adopted by the Business Court Division in various Circuit Courts for appeals made by Antero and CNX for tax years 2016 and

2017. (Hr'g Tr. pp. 31:16-32:8, 50:1-11; Hr'g Tr. Exh. 14). The Business Court orders are currently on appeal to the West Virginia Supreme Court of Appeals.¹

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

On February 13, 2018, Antero submitted to the Tyler County Assessor and the Tyler County Commission sitting as the Board of Assessment Appeals an Application for Review of Property Assessment with regard to its gas wells, and Antero appeared on October 30, 2018, by counsel, before the Board. (See W. Va. Code § 11-3-24). The Board used a third-party court reporter to produce a certified transcript of the hearing at which Antero and the Tax Department presented evidence. Exhibits introduced at the hearing and provided to the Board will be transmitted to the Court within thirty (30) days, as provided by West Virginia Code § 11-3-25. The original transcript of the proceeding was attached to Antero's Petition as Exhibit A. (See W. Va. Code § 58-3-4.)

By an Order dated November 27, 2018, the Board determined to make no adjustment to the State Tax Department's valuation of Antero's gas wells for the 2018 tax year. (See Ex. B to Antero's Petition). Antero timely petitions this Court for relief from the Board's erroneous

¹ See *Honorable Dale W. Steager, WV State Tax Commissioner, Honorable John L. Breen, Assessor of Lewis County and The County Commission of Lewis County v. Consol Energy, Inc., DBA CNX Gas Company, LLC*, Docket No. 18-0121; *Honorable Dale W. Steager, WV State Tax Commissioner, Honorable A. Ray Bailey, Assessor of McDowell County and The County Commission of McDowell County v. Consol Energy, Inc., DBA CNX Gas Company, LLC*, No. 18-0122; *Honorable Dale W. Steager, WV State Tax Commissioner, Honorable David Sponaugle, Assessor of Doddridge County and The Doddridge County Commission v. Consol Energy, Inc., DBA CNX Gas Company, LLC*, No. 18-0123; *Honorable Dale W. Steager, WV State Tax Commissioner, Honorable Arlene Mossor, Assessor of Ritchie County and The County Commission of Ritchie County v. Antero Resources Corporation*, No. 18-0124; *Honorable Dale W. Steager, WV State Tax Commissioner, Honorable David Sponaugle, Assessor of Doddridge County and The Doddridge County Commission v. Antero Resources Corporation*, No. 18-0125.

determination within thirty (30) days of the service of the Order, which occurred on November 29, 2018. (*See* W. Va. Code § 11-3-25).

III. ANALYSIS

A. Applicable Legal Standards.

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 this 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 2018 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.

The Tax Department should consider actual operating expenses to offset the presumed valuation of expenses for each well. According to the Tax Department’s legislative rule, the Tax Commissioner considers “operating expenses” to be “the “ordinary expenses which are directly

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.

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. Based on the testimony of Antero’s expert, Altus, the report of Moss Adams, and the documents submitted to the Tax Department and the Board, the operating expenses submitted by Antero are those contemplated in Section 3.16.

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 Tax Department failed to consider the demonstrated actual operating expenses supplied by Antero in both informal and formal testimony. Accordingly, Antero now petitions this Court to find (1) that the Board incorrectly made no changes to the Tax

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.

Department's valuation, (2) that the State's "cap" of \$175,000 in operating expenses be removed, and (3) that the value of Antero's Tyler County gas wells for the 2018 tax year be set at \$268,387,594, based on the compromise value calculated by applying the State's 20% average annual industry operating expense percentage by Antero's gross receipts.⁴

B. The Tax Department Failed to Consider the Actual Operating Expenses of Antero's Gas Wells and, Thus, Failed to Correctly Value that Property; Antero, on the Other Hand, Introduced Clear and Convincing Evidence of the Allowable Operating Expenses.

While the State Tax Department has discretion to select the appraisal method that it determines will provide the most accurate valuation of personal property, once it chooses a method, it must correctly apply the method.

For Antero's Marcellus wells in Tyler County, the Tax Department has not followed its own rules regarding average industry operating expenses, as set forth in Antero's Exhibits and expert testimony at the hearing before the Board on October 30, 2018, and the Tax Department has, therefore, failed to properly calculate the fair market value of Antero's Marcellus wells. It is also improper for the Tax Department to place a cap on operating expenses, another factor resulting in an inflated value for Antero's Marcellus wells. As demonstrated at the hearing, the survey used by the Tax Department to calculate average industry operating expenses for Marcellus wells was poorly drafted and misleading and resulted in the Tax Department calculating an operating expense "cap" well below the amount of operating expenses actually incurred to operate a Marcellus well. Antero avers that not only is a "cap" not supported by law, but that the Tax Department also calculated a wildly inaccurate "cap."

⁴ Antero asserts, however, that in order to calculate the fair market value of the Marcellus wells, as is required of the Tax Commissioner under W. Va. Code § 11-1C-10(d), actual operating expenses must be considered.

Additionally, by calculating the allowed operating expenses at the lesser of 20% of gross receipts or \$175,000, the Tax Department treats similarly situated taxpayers differently in violation of United States Constitution and the West Virginia Constitution, as the “cap” of \$175,000 only adversely affects tax payers that have wells with gross receipts over a certain threshold. Equal Protection Clause of the United States Constitution, Amendment XIV § 1 and West Virginia Constitution, Article X, section 1.

Finally, the Tax Department’s valuation of Antero’s wells did not properly account for the decline rate or discount rate. As a result, Antero’s wells were overvalued.

IV. CONCLUSION

WHEREFORE, Antero Resources Corporation respectfully requests that the Court:

- (i) Find that the Tyler County Board of Assessment Appeals incorrectly upheld the valuation of Antero’s Tyler County gas wells by the West Virginia Department of Revenue, State Tax Department, Property Tax Division for the 2018 tax year;
- (ii) Correct the value of Antero’s Tyler County gas wells for the 2018 tax year at \$268,387,594, based on the compromise value calculated by applying the State’s 20% average annual industry operating expense percentage by Antero’s gross receipts; and
- (iii) Order such other relief as the Court deems appropriate.

ANTERO RESOURCES CORPORATION,

By Counsel

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IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION
Petitioner,

v.

Civil Action No. 18-AA-1

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE LISA JACKSON,
Assessor of Tyler County,
THE COUNTY COMMISSION OF TYLER COUNTY,
Respondents.

ANSWER OF
WEST VIRGINIA STATE TAX DEPARTMENT AND
THE HONORABLE LISA JACKSON TO PETITION

COME NOW Dale W. Steager, State Tax Commissioner of the State of West Virginia, and the Honorable Lisa Jackson, Assessor of Tyler County, (hereinafter, collectively referred to as "Tax Commissioner" or "Tax Department"), by counsel, in order to Answer the *Petition of Petitioner Antero Resources Corporation* filed in this matter and states as follows. The *Petition of Petitioner Antero Resources Corporation* (hereinafter, *Petition*) was filed with the Circuit Court of Tyler County on or about December 12, 2018. The *Petition* was served on Assessor Jackson on or around December 13, 2018. A *Notice of Bona Fide Defense* was filed on behalf of the Assessor Jackson on December 21, 2018, which extended the deadline to file an answer to January 14, 2019. The *Petition* was served on the Tax Department on or about January 2, 2019.

ANSWER TO PETITION

The paragraphs in the *Petition* are not individually numbered as required pursuant to the Rules of Civil Procedure; nevertheless, the Tax Department will respond to the *Petition* as if the paragraphs were numbered as required.

1. The Tax Department denies that the decision of the Tyler County Commission sitting as a Board of Assessment Appeals is erroneous in any manner as alleged in Paragraph 1 of the *Petition*. The Tax Department denies that it has overvalued Antero's producing oil and gas wells in any manner as alleged in Paragraph 1 of the *Petition*. The Tax Department denies that Antero has been aggrieved in any manner as alleged in Paragraph 1 of the *Petition*. The Tax Department admits the remaining allegations set forth in Paragraph 1 of the *Petition*.

2. Paragraph 2 of the *Petition* summarizes the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes based on the applicable legislative rule and states that legal conclusions will be determined by the Court. Furthermore, the procedures applied by the Tax Department are set forth in the testimony of Cindi Hoover, Senior Appraiser, as recorded in the transcript of the October 30, 2018 hearing.

3. The Tax Department states that sentence 1 of Paragraph 3 of the *Petition* generally summarizes a portion of the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. The Tax Department admits that in years prior to the 2016 TY, it invited taxpayers to submit **actual operating expenses per well** for review and consideration by the Property Tax Division as alleged in the first part of sentence 2 of Paragraph 3. The Tax Department lacks sufficient information to form an opinion with regards to

the truth or falsity of the remaining allegations in of sentence 2; consequently, those allegations are denied. The Tax Department states that the applicable legislative rule does not authorize the Tax Department to utilize statewide allocated operating expenses for individual taxpayers as demanded by Antero Resources Corporation (hereinafter referred to as “Antero”); furthermore, Antero has failed to cite any statutory authority for the use of statewide allocated operating expenses for individual taxpayers as demanded by the Taxpayer. The Tax Department admits that Administrative Notice 2018-08 does not invite taxpayers to submit actual operating expenses per well for review and consideration by the Property Tax Division as in years prior to the 2016 TY as alleged in the first part of sentence 3 of Paragraph 3. The Tax Department denies that Antero submitted **actual operating expenses per well** for review and consideration as alleged in Paragraph 3. The Tax Department states that Administrative Notice 2018-08 complies with the applicable state law and legislative rules contrary to the remaining allegations Paragraph 3. The Tax Department denies the remaining allegations set forth in Paragraph 3 of the *Petition*. To the extent that a further response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner’s property for tax purposes and states that legal conclusions will be determined by the Court.

4. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth in the first sentence of Paragraph 4 of the *Petition* regarding the basis on which Antero calculated operating expenses; consequently, those allegations are denied. The Tax Department admits that the valuation for the 2018 TY is based on the 2016 CY income data as alleged in the last sentence of Paragraph 4 of the *Petition*. The Tax Department denies that Antero submitted **actual operating expenses per well** for the gas wells under protest as alleged

in Paragraph 4 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 4 of the *Petition*.

5. The Tax Department denies allegations set forth in sentence 1 of Paragraph 5 of the *Petition*. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth in sentences 2, 3, and 4 of Paragraph 5, of the *Petition* regarding the basis on which Antero calculated operating expenses; consequently, those allegations are denied. The Tax Department denies that gathering and compression expenses, processing expenses, and transportation expenses are proper expenses to be deducted in valuing the producing oil and gas wells for ad valorem property tax purposes, as alleged in Paragraph 5 of the *Petition*. The Tax Department denies that its application of the legislative rule has resulted in an erroneous valuation for Antero's producing oil and gas wells as alleged in sentence 5 of Paragraph 5. The Tax Department denies that a taxpayer's business model is a valid basis on which to deduct expenses that are not specifically authorized under the legislative rule as alleged in sentence 6 of Paragraph 5. The Tax Department further denies that it has valued Antero's operating gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 5 of the *Petition*.

6. The Tax Department admits that it utilized an Average Annual Industry Operating Expense deduction of 20% of gross receipts not to exceed \$175,000 per well for the 2018 TY as alleged in Paragraph 6 of the *Petition*; the Tax Department denies that its calculation of the Average Annual Industry Operating Expense is erroneous in any manner as alleged in Paragraph 6 of the *Petition*. The Tax Department states that the expenses for calculating the value of operating oil and gas wells are set forth in the administrative notices and other supporting documents as alleged in Paragraph 6 of the *Petition*. The Tax Department further states that the administrative notices and other documents from the Tax Department speak for themselves; the

Tax Department objects to any attempts to characterize the supporting documentation issued by the Tax Department. The Tax Department denies allegations set forth in sentences 2, 3, 4, and 5, of Paragraph 6 of the *Petition*. The Tax Department denies that Antero submitted actual operating expenses per well for the gas wells under protest as alleged in Paragraph 6 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 6 of the *Petition*.

7. The Tax Department admits that Antero appeared at a Board of Assessment Appeals hearing on October 30, 2018, presented a report from Altus group, and that the BAA made no changes to the Tax Department's valuation as alleged in Paragraph 7 of the *Petition*. The Tax Department further admits that Antero Resources attempted to claim a deduction of 38% of gross receipts or \$946,500 per well as alleged in Paragraph 7 of the *Petition*; however, the Tax Department states that the Average Annual Industry Operating Expense as calculated under the legislative rule is the only deduction authorized for ad valorem valuation purposes. Furthermore, the Tax Department denies that Antero presented clear and convincing to support its protest, that Antero provided actual operating expenses for each well under protest, that the Tax Department's valuation is wrong in any manner, and further denies the remaining allegations set forth in Paragraph 7 of the *Petition*.

8. The Tax Department lacks sufficient information to determine whether the appeal before the Circuit Court of Tyler County was filed timely; consequently, that allegation is denied. The Tax Department denies that Antero submitted actual operating expenses per well for the gas wells under protest as alleged in Paragraph 8 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 8 of the *Petition*.

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

10. The Tax Department admits that Antero Resources' response to the 2014 Survey was included in the calculation of the Average Annual Industry Operating Expense as alleged in sentence 1 of Paragraph 10 of the *Petition*. The Tax Department admits that the Survey asked for lifting expenses as alleged in the first part of sentence 2 of Paragraph 10 of the *Petition*; however, the Tax Department denies that gathering and compression expenses, processing costs and transportation expenses are proper elements to be included in the calculation of the Average Annual Industry Operating Expense as alleged in sentences 2 and 4 of Paragraph 10. The Tax Department admits that the 2014 Survey was based on previous surveys for conventional oil and gas wells as alleged in sentence 3 of Paragraph 10; the Tax Department denies that the 2014 Survey was incomplete, inadequate or erroneous in any manner for horizontal Marcellus wells, as alleged in sentence 3 of Paragraph 10. The Tax Department denies that gathering and compression expenses, processing costs and transportation expenses are proper elements to be included in the calculation of the Average Annual Industry Operating Expense as alleged in sentences 4 and 5 of Paragraph 10. The Tax Department further denies that information provided to trade associations, such as the WV Oil and Natural Gas Association, in the 2017 calendar year have any bearing whatsoever regarding the calculation of the Average Annual Industry Operating Expense which was required to be performed during 2014 calendar year according to the legislative rule contrary to the allegations in sentences 5, 6, and 7, of Paragraph 10 of the *Petition*. The Tax Department denies that its calculation of the Average Annual Industry Operating Expense of 20% of gross receipts not to exceed \$175,000 per well for the 2018 TY is erroneous or contrary to the applicable legislative rule in any manner as alleged in Paragraph 10 of the *Petition*.

11. The Tax Department denies that its 2014 Survey was erroneous in any manner as alleged in sentence 1 of Paragraph 11. Upon information and belief, Counsel represents to the

Court that the Property Tax Division re-calculated the 2014 Survey results based upon argument from Antero Resources that the information provided by Antero to the Tax Department in the 2014 Survey was incomplete and inaccurate.¹ As a result of Antero's arguments, the Tax Department deleted Antero's data from the 2014 Survey; the re-calculated Average Annual Industry Operating Expense was 20% of gross receipts not to exceed \$175,000 per well for the 2018 TY based upon the remaining Survey responses from Marcellus Shale producers.² The Tax Department denies that the Average Annual Industry Operating Expense deduction utilized for the 2018 TY is erroneous in any manner as alleged in Paragraph 11 of the *Petition*.

12. The Tax Department admits that it re-calculated the Average Annual Industry Operating Expense based upon information provided by Antero to the Tax Department that Antero had provided incomplete and inaccurate information on the 2014 Survey as alleged in sentence 1 of Paragraph 12. The Tax Department denies that the Average Annual Industry Operating Expense deduction utilized for the 2018 TY is erroneous in any manner as alleged in Paragraph 12 of the *Petition*. The Tax Department further denies that information provided by trade associations, such as the WV Oil and Natural Gas Association, in the 2017 calendar year have any bearing whatsoever regarding the calculation of the Average Annual Industry Operating Expense which was required to be performed during 2014 calendar year according to the legislative rule contrary to the allegations in Paragraph 12 of the *Petition*.

¹ See Testimony of Jeff Amburgey, Director of Property Tax Division in Civil Action Nos. 17-AA-1 and 17-AA-3 before the Business Court Division of the Circuit Court of Doddridge County; currently before the WV Supreme Court in Appeal No. 18-0125; at Tax Department's Initial Brief at pp. 7-8; 21.

² For the 2016 TY, the Average Annual Industry Operating Expense was 20% of gross receipts not to exceed \$150,000 per well. The Tax Department utilized the Average Annual Industry Operating Expense of 20% of gross receipts not to exceed \$175,000 per well for the 2017 TY and the 2018 TY.

13. The Tax Department denies that a taxpayer's business model is a valid basis on which to deduct expenses that are not specifically authorized under the legislative rule as alleged in sentence 1 of Paragraph 13. The Tax Department denies that gathering and compression expenses, processing expenses, and transportation expenses are proper expenses to be deducted in valuing the producing oil and gas wells for ad valorem property tax purposes, as alleged in Paragraph 13 of the *Petition*. The Tax Department further denies that its application of the legislative rule has resulted in an erroneous valuation for Antero's producing oil and gas wells as alleged in Paragraph 13. The Tax Department also denies that it has valued Antero's producing oil and gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 13 of the *Petition*.

14. The Tax Department admits that Antero attempted to claim expenses of 38% of gross receipts or \$946,000 per well for the 2018 TY as alleged in Paragraph 14 of the *Petition*. The Tax Department denies that Antero submitted actual operating expenses for every well under protest as alleged in Paragraph 14 of the *Petition*. The Tax Department admits that the Board of Assessment Appeals accepted the Department's valuation and made no changes to that valuation as alleged in Paragraph 14. The Tax Department also denies that it has valued Antero's producing oil and gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 14 of the *Petition*.

15. Paragraph 15 of the *Petition* summarizes some of the mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by

the Court. The Tax Department states that it properly valued Antero's producing oil and gas wells based on the applicable legislative rule.

16. The Tax Department admits that in years prior to the 2015 TY, the Tax Department stated in the administrative notices that it would consider, and possibly use, the actual operating expenses from individual producers in the valuation of the property as alleged in the first sentence of Paragraph 16 of the *Petition*. The Tax Department denies that it is authorized by statute or legislative rule to use actual operating expenses per well for individual taxpayers in valuing the property instead of the "average annual industry operating expenses" required pursuant to W.Va. St. R. § 110-1J-4.3 as alleged in Paragraph 16 of the *Petition*; the Tax Department demands strict proof thereof. The Tax Department denies that Antero has submitted the actual operating expenses for each of the gas wells being challenged in Tyler County as alleged in Paragraph 16 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 16 of the *Petition*.

17. The Tax Department states that the proper expense deductions for valuing operating oil and gas wells are set forth in the administrative notices and other supporting documentation issued by the Tax Department as alleged in Paragraph 17 of the *Petition*. The Tax Department further states that the administrative notices and other documents from the Tax Department speak for themselves; the Tax Department objects to any attempts to characterize the supporting documentation issued by the Tax Department. The Tax Department denies that Antero has proven that the actual operating expenses for each of the gas wells being challenged in Tyler County is \$946,500 as alleged in the second sentence of Paragraph 17 of the *Petition*. The Tax Department denies that it has valued Antero's gas wells erroneously in any manner as alleged in sentence 3 of Paragraph 17 of the *Petition*. The Tax Department admits the allegations set forth in the fourth,

fifth, and sixth sentences, of Paragraph 17 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 17 of the *Petition*.

18. The Tax Department admits the allegations set forth in Paragraph 18 of the *Petition*.

19. The Tax Department denies that it failed to support the refusal to accept Antero's proffered allocated expenses with credible evidence as alleged in Paragraph 19.

20. The Tax Department admits that Elizabeth Burg, of Altus, testified on behalf of Antero at the Board of Assessment Appeals hearing on October 30, 2018, as alleged in Paragraph 20 of the *Petition*. The Tax Department admits that charts and documentation were admitted into the record as Petitioner's Exhibits at the Board of assessment Appeals as alleged in Paragraph 20 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 20 of the *Petition*.

21. The Tax Department admits that Antero presented testimony from Altus, a consulting company, at the Board of Assessment Appeal hearing in October of 2018 as alleged in Paragraph 21 of the *Petition*. The Tax Department denies that Antero has submitted the actual operating expenses for each of the gas wells being challenged in Tyler County as alleged Paragraph 21 of the *Petition*. The Tax Department denies that gathering and compression expenses, processing expenses, and transportation expenses, are proper expenses to be deducted in valuing the producing oil and gas wells for ad valorem property tax purposes, as alleged in Paragraph 21 of the *Petition*. The Tax Department denies that its application of the legislative rule has resulted in an erroneous valuation for Antero's producing oil and gas wells as alleged in Paragraph 21. The Tax Department denies that a taxpayer's business model is a valid basis on which to deduct expenses that are not specifically authorized under the legislative rule as alleged in Paragraph 21. The Tax Department further denies that it has valued Antero's gas wells erroneously in any manner

as alleged in Paragraph 21 of the *Petition*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth in Paragraph 21 of the *Petition*; consequently, those allegations are denied.

22. The Tax Department admits that Moss Adams, a business consultant, valued Antero Resources' producing oil and gas wells as alleged in sentence 1 of Paragraph 22. The Tax Department admits that Moss Adams utilized a different decline rate and a different discount rate than utilized by the Tax Department as alleged in Paragraph 22. However, the Tax Department states that the decline rate and discount rate must be the rates specified in the legislative rule contrary to the allegations set forth in Paragraph 22 of the *Petition*. The Tax Department admits that Moss Adams valued the Tyler County wells at \$203.9 million while the Tax Department valued the wells at \$382.4 million as alleged in Paragraph 22. The Tax Department denies that it has erroneously valued Antero's producing oil and gas wells in any manner as alleged in Paragraph 22 of the *Petition*. The Tax Department denies the remaining allegations set forth in Paragraph 22 of the *Petition*.

23. The Tax Department admits that Altus proposed "an alternate approach" to valuing Antero's gas wells in Tyler County as alleged in Paragraph 23 of the *Petition*. The Tax Department denies that the "alternate approach" advocated by Antero is authorized under the legislative rule and the applicable statutes as alleged in Paragraph 23 of the *Petition*; the Tax Department demands strict proof thereof. The Tax Department further denies that it valued Antero's operating gas wells erroneously in any manner as alleged in Paragraph 23 of the *Petition*. The Tax Department admits the allegations set forth in sentences 4 and 5 of Paragraph 23.

24. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth in sentence 3 of Paragraph 24 of the *Petition*; consequently, those

allegations are denied. The Tax Department admits the remaining allegations set forth in Paragraph 24 of the *Petition*.

25. The Tax Department admits that the Tyler County Commission sitting as a Board of Assessment Appeals issued an Order dated November 27, 2018, which affirmed the Tax Department's valuation for the 2018 TY as alleged in Paragraph 25 of the *Petition*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth in Paragraph 25 of the *Petition*; consequently, those allegations are denied.

26. Paragraph 26 of the *Petition* summarizes the law regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

27. Paragraph 27 of the *Petition* summarizes the law and legislative rule regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

28. Paragraph 28 of the *Petition* summarizes the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

29. The Tax Department denies the allegations set forth in the first sentence of Paragraph 29 of the *Petition*; the Tax Department states that the Taxpayers have failed to cite any

statutory authority or legislative rule requiring the use of an individual taxpayer's actual operating expenses in calculating the value of gas wells and demands strict proof thereof. The Tax Department denies that Antero presented actual operating expenses for each well under protest and that the information provided by Antero is the type of information contemplated by the legislative rule as alleged in the last sentence of Paragraph 29. The remaining allegations set forth in Paragraph 29 of the *Petition* summarize the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

30. Paragraph 30 of the *Petition* summarizes the law regarding the burden of proof for taxpayers challenging the valuation of property and the record to be reviewed in circuit court for the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

31. The Tax Department denies that the "compromise value" advocated by Antero is the proper valuation under West Virginia law. The statute requires the Tax Department to value all mineral property at the true and actual value as determined by law. *See* W. Va. Code § 11-6K-1(a). The Tax Department denies the allegations set forth in the first sentence of Paragraph 31 of the *Petition*. The remainder of Paragraph 31 recites Antero's prayer for relief. No response is necessary. To the extent that a response may be applicable, the Tax Department denies that any relief is warranted in this case.

32. The Tax Department denies that it has discretion to select the appraisal methodology for operating oil and natural gas wells as alleged in Paragraph 32 of the *Petition*. According to the applicable legislative rules, the value of oil and natural gas producing properties "...shall be determined through the process of applying a yield capitalization model to the net receipts..." See W. Va. St. R. § 110-1J-4.1. The Tax Department is required to use the income approach to value for operating oil and gas wells under the legislative rule. The Tax Department further denies that it failed to correctly apply the yield capitalization model to Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

33. The Tax Department denies the allegations set forth in Paragraph 33 of the *Petition*.

34. The Tax Department denies the allegations set forth in Paragraph 34 of the *Petition*.

35. The Tax Department denies the allegations set forth in Paragraph 35 of the *Petition*.

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

AFFIRMATIVE DEFENSE NUMBER 1

37. The Tax Department denies that a "compromise value" is the proper valuation for mineral property for ad valorem property tax purposes as advocated by Antero Resources. The proper valuation is the true and actual value as set forth in W. Va. Code § 11-6K-1(a) and in the decisions of the WV Supreme Court of Appeals.

AFFIRMATIVE DEFENSE NUMBER 2

38. Antero has failed to cite any statutory authority requiring the Tax Department to use the actual operating expenses for an individual taxpayer in valuing the operating oil and gas wells under protest for *ad valorem* tax purposes in a mass appraisal environment. The Tax Department demands strict proof thereof.

AFFIRMATIVE DEFENSE NUMBER 3

39. Antero Gas has failed to provide the actual operating expenses per well for the gas wells under protest. Antero has simply provided the arithmetic average of its statewide expenses allocated to gas wells.

AFFIRMATIVE DEFENSE NUMBER 4

40. The applicable legislative rule states:

4.3. Average industry operating expenses. -- The Tax Commissioner shall every five (5) years, determine the average annual industry operating expenses per well. **The average annual industry operating expenses shall be deducted from working interest gross receipts to develop an income stream for application of a yield capitalization procedure.**

W. Va. St. R. § 110-1J-4.3 (emphasis added). The Tax Department has correctly valued the operating gas well as required under the applicable legislative rules.

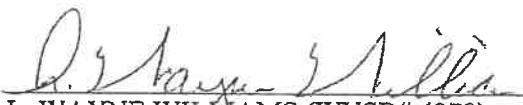
WHEREFORE, State Tax Commissioner and The Honorable Lisa Jackson, Assessor of Tyler County, pray the Honorable Court DISMISS the Petition with prejudice and for such additional relief as the Court deems just and proper.

Respectfully submitted,

DALE W. STEAGER,
STATE TAX COMMISSIONER
OF WEST VIRGINIA,
THE HONORABLE LISA JACKSON,
ASSESSOR OF TYLER COUNTY

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL



L. WAYNE WILLIAMS (WVSB# 4370)
ASSISTANT ATTORNEY GENERAL
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304-558-2522

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA
ANTERO RESOURCES CORPORATION

Petitioner,

v.

Civil Action No. 18-AA-1

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE LISA JACKSON,
Assessor of Tyler County,
THE COUNTY COMMISSION OF TYLER COUNTY,

Respondents.

CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General, do hereby certify that the foregoing
"Answer of West Virginia State Tax Department and The Honorable Lisa Jackson to Petition"
was served upon the following by depositing a copy of the same in the United States Mail, via
first-class postage prepaid, this 11th day of January, 2019, addressed as follows:

Craig A. Griffith, Esq.
John J. Meadows, Esq.
Steptoe & Johnson, PLLC
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D. Luke Furbree, Esq.
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P.O. Box 125
Middlebourne, WV 26149
Counsel for Tyler County Commission


L. WAYNE WILLIAMS

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Tyler County Circuit Court
Civil Action No. 18-AA-1
The Honorable Judge Cramer

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,

THE HONORABLE LISA JACKSON,
Assessor of Tyler County, and

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

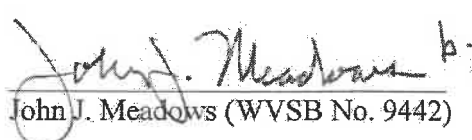

Respondents.

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

D. Luke Furbree, Esquire
Tyler County Prosecuting Attorney
P.O. Box 125
Middlebourne, WV 26149

 by  9/18/20
John J. Meadows (WVSB No. 9442) P