EXHIBIT
C

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 18-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,
ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

BRIEF OF RESPONDENTS MATTHEW R. IRBY, WEST VIRGINIA STATE TAX COMMISSIONER AND ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY

Two years ago, Antero Resources Corporation (hereinafter, "Antero") failed to convince the Supreme Court of Appeals that the State Tax Commissioner's exclusion of post-production expenses from the average operating expense deduction for the 2016 and 2017 tax years was arbitrary, capricious, or unreasonable. *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 224, 832 S.E.2d 135, 149 (2019). It also failed to persuade the court that excluding these expenses assessed its property contrary to "true and actual" value. *Id.* at 222, 832 S.E.2d at 148. The court found that the Tax Commissioner violated constitutional "equal and uniform" and "equal protection" principles by using "two differing formulas"—a percentage and a monetary average—"to calculate operating expenses." *Id.* at 220, 832 S.E.2d at 146. But *Consol* resolved this "unconstitutionally" inequality by mandating that the operating expense deduction be calculated using "a singular monetary average." Syl. Pt. 12, *id.* at 213, 832 S.E.2d at 137. Following *Consol*, the Tax Commissioner revalued Antero's wells for the 2018 and 2019 tax years using a "singular monetary average" deduction without the percentage-based deduction *Consol* prohibited.

Now, Antero invites this Court to ignore *Consol* and find that its "actual postproduction expenses" are deductible for the 2018 tax year. Petitioner's Brief, at 4, (Aug. 24, 2021) (hereinafter, "Pet. Br. at __"). It also claims that each of its wells should receive a $946,500 deduction, Petr's. Br. at 2, instead of the $175,000 singular monetary average *Consol* mandated. This Court should reject Antero's unfounded claims. The Tax Commissioner's revaluation properly applied *Consol* and should be adopted. And in stark contrast, Antero fails to present clear and convincing evidence of the total value it would prefer. Instead, it simply rests on the assertion that the revaluations are excessive. This is insufficient to sustain Antero's burden.

Moreover, its arguments are without merit. Antero says that the Tax Commissioner has violated the Administrative Procedures Act, W. Va. Code §§ 29A-1-1 *et seq*. (hereinafter, the "APA") and due process because he refuses to retroactively apply a single-page letter from former Tax Commissioner, Dale Steager, entitled *Important Notice to Producers of Natural Gas and Oil for Property Tax Year 2021* (June 30, 2020) (hereinafter, *2020 Notice*) (reference by Antero as "*June 30, 2020, Guidance*"). Petr. Br. Ex. A. It also argues that the Tax Commission violated equal protection and the dormant commerce clause. Petr's Br. at 22-24.

But Mr. Steager's *2020 Notice* was unlawful because it violated rulemaking requirements. Recognizing this, he withdrew it roughly three months later. Petr's Br. Ex. B. Even if the notice was valid, Antero could not rely on it for the 2018 tax year because it expressly applied prospectively to the 2021 tax year. Any attempt to apply it to past tax years would violate the APA's requirement that all rules only have "future effects." W. Va. Code § 29A-1-2(j). It is not arbitrary, capricious, or in violation of due process for the current Tax Commissioner to refuse to apply the now-withdrawn *2020 Notice*. And when Antero's property is assessed under *Consol*, equal protection and the commerce clause are satisfied because every producer in a class is treated equally and interstate commerce is not disfavored. Antero's *Petition* should be rejected.

BACKGROUND

I. THE TAX COMMISSIONER'S APPRAISAL FORMULA.

The Tax Commissioner annually appraises producing wells, which are then assessed by the counties at "sixty percent of [their] true and actual value." W. Va. Code § 11-6K-1(a). To determine the value of each well, the Tax Commissioner applies a multi-component yield capitalization formula established by legislative rule. W. Va. Code R. §§ 110-1J-1 *et seq.* (2005). The formula takes the gross receipts producers report on their yearly returns and adjusts "for production decline to reflect the income available" during the assessment year. W. Va. Code R. § 11-1J-4.6 (2005). "Gross receipts" is defined as the "total income received" from each well's "production, at the field line point of sale." *Id.* § 110-1J-3.8. The "average annual industry operating expenses" are then deducted to determine the well's "net receipts," *id.* § 110-1J-4.3 & 4.1, which are then capitalized to determine taxable value. *Id.* § 110-1J-4.1. "Operating expenses" in turn, are defined as "ordinary expenses which are directly related to the maintenance and production of natural gas and/or oil." *Id.* § 110-1J-3.16. Each year, the Tax Commissioner also publishes the summaries of the variables used in this formula in the State Register. W. Va. Code R. § 110-1J-4.12. He also publishes an administrative notice in the State Register that details the available average operating expense deduction. From this formula, the Tax Commissioner prepares tentative appraisals that are given to producers by December 1 each year and finalized fifteen days later. W. Va. Code §§ 11-6K-4(e)(1), 11-6K-6(a)-(b).

II. ANTERO PROTESTS OF THE 2018 ASSESSMENT.

Antero operates 75 horizontal Marcellus Shale wells in Ritchie County. Pet. at 1; Pet. Ex. A (Hr'g Ex. 1). For the 2018 tax year, the Tax Commissioner appraised these wells under the 2018 valuation variables and Administrative Notice 2018-08, which set the average annual industry operating expense deduction for Marcellus horizontal wells at 20% of gross receipts "not to exceed

$175,000" for gas production and "$5,750 for oil" production. Pet. Ex. A (Hr'g Ex. 5A & 8B). And like he had for years prior, the Tax Commissioner did not include Antero's post-production expenses in the deduction. *Cf.* Pet. Ex. A (Hr'g Ex. 9A) (July 29, 2016) (Steager: noting that the maximum expense deduction did not include "gathering, compression, processing, and transportation charges"). Ritchie County then assessed Antero based on the appraisal, and Antero protested. Pet. Ex. A (Hr'g Ex. 1).

Before the Board of Assessment Appeals (hereinafter, the "Board"), Antero argued that the $175,000 cap on its operating expense deduction was "not supported by the law." Pet. Ex. A (Hr'g Tr. at 7, ln.10-11). It claimed that the cap "significantly overvalued" Antero's wells, *id.* (Hr'g Tr. at 6, ln.16), and that instead, it should be entitled to deduct 20% of gross receipts and that the total value of its wells in Ritchie should be set at $301,730,440 based on that percentage deduction. *Id.* (Hr'g Tr. at 34, ln.1-6); Pet. Ex. A (Hr'g Ex. 14). Alternatively, it claimed that the fair market value of its wells was $231.2 million. Pet. Ex. A (Hr'g Ex. 15). It also maintained that it should be permitted to deduct its post-production expenses because it was required to report its gross receipts up to the point of sale. Pet. Ex. A (Hr'g Tr. at 20, ln.4-24).

The Board rejected Antero's protest and ruled in favor of the original assessment. Pet. Ex. B. So, on December 7, 2018, Antero appealed to circuit court and its case was referred to this Business Court. In its *Petition*, Antero contended that the Tax Commissioner "significantly overstated" the value of Antero's wells by not deducting "actual operating expenses." Pet. at 8. But it argued that permitting a 20 percent deduction of gross receipts "without a [monetary] cap" would be a "reasonable" alternative approach. Pet. at 10. And it asked the circuit court to "[c]orrect the value" of its Ritchie County wells to $301,730,440 based on a 20 percent operating expense deduction. Pet. at 16.

III. *CONSOL* MANDATES A SINGULAR MONETARY AVERAGE DEDUCTION.

Seven months later, the Supreme Court of Appeals issued its opinion in *Consol*. There, the Tax Commissioner has applied the same methodology to appraise Antero's wells for the 2016 and 2017 tax years. He had expressed the operating expense deduction as a percentage and as a monetary average. He also excluded post-production expenses from the deduction. Like here, Antero argued that the monetary average "overvalued" its wells, *Consol*, 242 W. Va. at 220, 832 S.E.2d at 146, and it advocated for a percentage-based operating expense deduction. *Id.* at 224 n.21, 832 S.E.2d at 150 n.21. It also argued that the Tax Commissioner had to include gathering compressing, processing, and transportation expenses in the operating expense deduction "since gross receipts must be calculated at the 'field line point of sale." *Id.* at 222, 832 S.E.2d at 148.

But *Consol* rejected these arguments. It found that the Tax Commissioner's "use of two differing formulas"—a percentage and a monetary average—violated constitutional equal and uniform and equal protection principles. *Id.* at 220, 832 S.E.2d at 146. But it resolved this impermissible inequality by mandating that the "average annual industry operating expense" be expressed as "a singular monetary average deduction," Syl. Pt. 12, *id.* at 213, 832 S.E.2d at 137. The court also held that the exclusion of Antero's post-production expenses was not "arbitrary, capricious, or manifestly contrary" to statutory true and actual value requirements. *Consol*, 242 W. Va. at 223, 832 S.E.2d at 149. And it deferred to the Tax Commissioner's position that these expenses were not "directly related" to the "maintenance and production" of natural gas—and therefore, not deductible. *Id.*

In the wake of *Consol*, the Tax Commissioner revalued Antero's Ritchie County wells for the 2018 tax year. He revalued each gas producing well using an operating expense deduction of $175,000. Tax Br. Ex. A (Hoover Aff'd ¶ 14).[1] For each well that produced oil, he used a $5,570

[1] An affidavit from Cynthia R. Hoover, the former Tax & Revenue Manager of the West Virginia State Tax Department's Property Tax Division, is attached as Exhibit A to this *Brief of Respondents* (hereinafter, Tax

deduction. *Id.* (Hoover Aff'd ¶ 17). And for each well he disregarded the 20 percent and 35 percent deductions that *Consol* found impermissible. *Id.* (Hoover Aff'd ¶¶ 16-17). Based on these calculations, he determined that the total value of Antero's wells in Ritchie County for the 2018 tax year was $421,359,327. *Id.* (Hoover Aff'd ¶ 20). The Tax Commissioner forwarded these revaluations to Antero on April 24, 2020, and filed notice of them with this Court in February of 2021. Tax Br. Ex. B. Antero never responded to the revaluation.

IV. THE *2020 NOTICE* IS ISSUED AND WITHDRAWN.

Meanwhile, Antero continued to advocate for a change in the law. In the 2020 Legislative Session, the House and Senate both introduced bills which would have allowed producers to deduct "gathering, compression, processing, and transportation" costs. *See* W. Va. Acts 2020, Intr. S.B. 655 (Jan. 29, 2020) (proposing amendment to W. Va. Code § 11-1C-10(d)); W. Va. Acts 2020, Intr. H.B. 4460 (Jan. 22, 2020) (same). But these bill did not pass. The Tax Commissioner also filed a proposed legislative rule that would have permitted deductions for post-production expenses. *Notice of Public Comment*, W. Va. Code R. §§ 110-1J-1 *et seq*. (Aug. 21, 2020). But it was withdrawn on November 18, 2020.[2]

After the 2020 session bills failed, Mr. Steager published the *2020 Notice* (on the Tax Department's website). Petr's Br. Ex. A. The notice informed producers that their 2021 property tax returns were due on August 3, 2020. Petr's Br. Ex. A. It noted that producers were required to report "total income from production on any well, at the field line point of sale" "before

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Br. Ex. A). Typically, an appeal from a board of assessment appeals "shall be determined . . . from the record" below. W. Va. Code § 11-3-25(c) (2014). But in similar appeals, courts may also rely on "affidavits" from the Tax Commissioner which "explain[] [his] course of conduct or grounds for his decision." Syl. Pt. 4, *Frymier-Halloran v. Paige*, 193 W. Va. 687, 689, 458 S.E.2d 780, 782 (1995). Ms. Hoover's affidavit explains the revaluation conducted based on *Consol* and thus falls under *Frymier-Halloran*'s exception.

[2] A legislative rule may be "withdrawn by the agency any time before passage of a law authorizing . . . or directing its passage." W. Va. Code § 29A-3-14(a). To do so, the agency must simply "file a notice of" the withdrawal "in the state register." *Id.* For an interpretive rule, an agency may simply decline to final file the rule within six months of the close of public comments. *Id.* § 29A-3-8(a).

substract[ing] any" expenses. Petr's Br. Ex. A (quoting W. Va. Code R. § 110-1J-3.8). But for the upcoming 2021 returns, Mr. Steager directed producers to instead "adjust[]" their gross receipt reporting "to approximate the gross receipts [they] would have received had the sales been a field line sales transaction." Petr's Br. Ex. A. He claimed that the adjustment was necessary "[t]o avoid having [their] wells overvalued." Petr's Br. Ex. A.

But on October 9, 2020, Mr. Steager reconsidered the *2020 Notice* and published (on the Tax Department's website) a *Notice of Withdrawal* (hereinafter, the "*Withdrawal*") finding that the *2020 Notice* was "issued without legal authority, was void, and is ineffective." Petr's Br. Ex. B. He recognized that the *2020 Notice* had purported to "materially change the" Tax Department's "longstanding" exclusion of post-production expenses which was affirmed and upheld by *Consol*. Petr's Br. Ex. B. And by attempting to change that construction for the 2021 tax year, he had "substantially and materially affect[ed] private and public interests" that had relied on the past construction. Petr's Br. Ex. B. Such "material changes," he concluded, could only be accomplished through rulemaking or by statute. Petr's Br. Ex. B. But as Mr. Steager recognized, the *2020 Notice* had complied with none of the mandatory procedures for promulgating a legislative rule (or any rule). So, Mr. Steager found that the *2020 Notice* was "void and ineffective" and must be withdrawn. Petr's Br. Ex. B (quoting *Coordinating Council for Indep. Living, Inc. v. Palmer*, 209 W. Va. 274, 284, 546 S.E.2d 454, 464 (2001)). But he acknowledged that the appraisal formula could be "subject to" changes by a future Legislature. Petr's Br. Ex. B.

That is precisely what occurred in the 2021 Session through House Bill 2581. Among other things, the Legislature prospectively redefined the "[a]ctual annual operating costs" deduction to include the "gathering, compression, processing, separation, fractionation, and transportation charges" that were previously excluded from the appraisal formula. W. Va. Acts 2021, c. 261, *amending* W. Va. Code § 11-1C-10(d)(3)(B) (Apr. 10, 2021).

Still, Antero remained dissatisfied. It filed its *Brief of Petitioner* on August 24, 2021. Therein, it advocates for the application of the withdrawn *2020 Notice*. It argues that the *2020 Notice* was "an 'interpretive rule' under the APA, Petr's Br. at 9, and that it applies retroactively to the 2018 tax year because it merely clarifies the availability of a deduction for post-production expenses. *Id.* at 10-11. Even though the *2020 Notice* was issued after the Board's decision and then withdrawn, it argues that the Board violated the APA and due process by refusing to apply the *2020 Notice* to its 2018 assessment. *Id.* at 20-21. Finally, Antero asserts that the Board's decision violated equal protection and the dormant commerce clause. *Id.* at 21-24.

STANDARD OF REVIEW

The standards for this petition are well defined. This Court's primarily serve "an appellate function" that is "limited to roughly the same scope permitted under the" APA. *In re Tax Assessment Against Am. Bituminous Power Partners, L.P.*, 208 W. Va. 250, 255, 539 S.E.2d 757, 762 (2000). It must presume "that valuations for taxation purposes fixed by an assessor are correct." Syl. Pt. 2, *W. Pocahontas Props., Ltd. v. Cnty. Comm'n of Wetzel Cnty.*, 189 W. Va. 322, 322, 431 S.E.2d 661, 661 (1993). To overcome that presumption, a taxpayer must "demonstrating by clear and convincing evidence that the tax assessment is erroneous." *Id.* The Tax Commissioner's interpretation and application of legislative rules are "subject to *de novo* review." Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dep't of W. Va.*, 195 W. Va. 573, 578, 466 S.E.2d 424, 429 (1995). But even under *de novo* review, courts must "examine a regulatory interpretation of a statute by standards that include appropriate deference to agency expertise and discretion", *W. Va. Emp'rs Mut. Ins. Co. v. Bunch Co.*, 231 W. V a. 321, 332, 745 S.E.2d 212, 223 (2013), and avoid "substituting its determinations . . . in matters expressly delegated to" the agency. *Erie Ins. Property & Cas. Co. v. King*, 236 W. Va. 323, 330, 779 S.E.2d 591, 598 (2015).

ARGUMENT

I. ANTERO'S VALUE SHOULD BE SET ACCORDING TO THE REVALUATION.

The total value of Antero's wells in Ritchie County should be set at $421,359,327 according to the revaluation filed on February 9, 2021. Tax Br. Ex. A (Hoover Aff'd ¶ 20). The revaluation followed *Consol*'s direction to use a "singular monetary average" deduction, and Antero has not presented clear and convincing evidence that it was erroneous.

a. The revaluation was conducted according to *Consol*.

The revaluation should be adopted because it was conducted under *Consol*. For the original valuation, the Tax Commissioner appraised Antero pursuant to the 2018 valuation variables and related administrative notices. These gave horizontal Marcellus producers—like Antero—a 20 percent deduction from their reported gross receipts "not to exceed $175,000" for gas production and "$5,750 for oil" production. Pet. Ex. A (Hr'g Ex. 5A). But *Consol* determined that the "use of two differing formulas to calculate operating expenses" was impermissible, 242 W. Va. at 221, 832 S.E.2d at 147, and it found that the applicable legislative rules did not permit the "use of a percentage expression of the operating expense deduction." *Id.* at 225, 832 S.E.2d at 151. Instead, *Consol* found that W. Va. Code R. § 110-1J-4.3 required the use of a "singular monetary average deduction." Syl. Pt. 12, *id.* at 213, 832 S.E.2d at 137.

The revaluation complied with *Consol*'s directions. The Tax Commissioner recalculated the value of each of Antero's 75 wells in Ritchie County. In doing so, he used a $175,000 deduction for gas production and a $5,750 deduction for oil production. Tax Br. Ex. A (Hoover Aff'd ¶ 16-17). Each amount was the "singular monetary average" determined by taking producers' "ordinary expenses which [were] directly related to the maintenance and production of" gas or oil and averaging them to arrive at a "singular monetary" amount. *Cf. id.* at 225, 832 S.E.2d at 151. And the Tax Commissioner did not apply the percentage-based deductions that *Consol* found impermissible. Tax Br. Ex. A ¶ 16-17; *id.* at 225, 832 S.E.2d at 151. The revaluation also did not provide Antero a deduction for its post-production expenses because these are not "directly related" to the "maintenance and production" of gas or oil—and therefore, do not fall within the definition of "operating expenses." W. Va. Code R. § 110-1J-3.16; *cf.* Tax Br. Ex. A (Hoover Aff'd ¶ 8-9). *Consol* concluded that excluding these expenses was not "arbitrary, capricious, or manifestly contrary to the" Tax Commissioner's "enabling taxation statute." *Consol*, 242 W. Va. at 225, 832 S.E.2d at 151. The revaluations of Antero's wells in Ritchie County for the 2018 tax year complied with *Consol* and therefore, should be adopted.

b. Antero has failed to meet its burden to challenge the revaluation.

Antero has also not met its burden. Valuations "fixed by an assessing officer are presumed to be correct." Syl. Pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, 172 W. Va. 53, 54, 303 S.E.2d 691, 693 (1983). To overcome that presumption, a taxpayer must "demonstrate by clear and convincing evidence that the tax assessment is erroneous." Syl. Pt. 2, *W. Pocahontas*, 189 W. Va. at 322, 431 S.E.2d at 661. A taxpayer may not rest on allegations that the valuation is excessive. It must also "offer . . . evidence of the true and actual value of the . . . property." *Mountain Am., LLC v. Huffman*, 224 W. Va. 669, 687, 687 S.E.2d 768, 786 (2009).

Antero has failed to meet this burden. It has not presented "clear and convincing" evidence of the true and actual value of its property. At the Board and in its *Petition*, Antero argued that the total value of its wells should be set at $301,730,440. Pet. at 16; Pet. Ex. A (Hr'g Ex. 14). Alternatively, it argued that the fair market value of its wells was $231.2 million. Pet. at 8; Pet. Ex. A (Hr'g Ex. 15). But the *first* calculation cannot be used because it was based the 20 percent deduction *Consol* disallowed. 242 W. Va. at 225, 832 S.E.2d at 151. The *second* is likewise unreliable because it uses a different decline rate and capitalization rate than the legislative rule provides. *Cf.* Pet. at 10; Pet. Ex. A (Hr'g Tr. at 35, ln.6). But it is also not obvious that the second calculation applied the same operating expense deduction Antero now claims. In its *Petitioner's*

Brief, Antero argues that its actual post production expenses were $946,500 per well. Petr's Br. at 2. But it does not provide a calculation of the total value of its wells. And it does not allege (must less prove) that $231.2 million valuation presented below was based on a $946,500 per well deduction. *See* Pet. Ex. A (Hr'g Ex. 15). Antero's brief says nothing of the total value of its property. It simply asserts that the Tax Commissioner's revaluation is excessive and leaves it to this Court to guess what value Antero would prefer. But "judges are not like pigs, hunting for truffles buried . . . somewhere in the lower [tribunal's] files." *State v. Honaker*, 193 W. Va. 51, 56 n.4, 454 S.E.2d 96, 101 n.4 (1994). It was Antero's burden to offer alternative "evidence of the true and actual value of [its] property." *Mountain Am.*, 224 W. Va. at 687, 687 S.E.2d at 786. It has failed to do so.

II. ANTERO'S ARGUMENTS ARE NOT ON THE RECORD BELOW.

Antero's criticisms of the Board should be rejected because they were not raised on the record below. Here, Antero argues that the Board violated the APA, due process, equal protection, and the commerce clause. But these arguments were not raised below; so, Antero has no "right to raise [them] on appeal." *Hoover v. W. Va. Bd. of Med.*, 216 W. Va. 23, 26, 602 S.E.2d 466, 469 (2004). And Antero supports these arguments with several exhibits that were never presented to the Board and do not appear on the certified record. *See* Petr's Br. Exs. A-B, D & F. These new exhibits cannot be considered. This Court serves "an appellate function" that is "limited to roughly the same scope permitted under the" APA. *Am. Bituminous*, 208 W. Va. at 255, 539 S.E.2d at 762. In that capacity, "judicial review" must focus on the "record already in existence, not some new record made initially in the reviewing court." *Frymier-Halloran*, 193 W. Va. at 696, 458 S.E.2d at 788. This Court must "determined" the appeal "from the record" certified by the Board. W. Va. Code § 11-3-25.

Some exceptions to this rule exist. *See, e.g.*, Syl. Pt. 4, *Frymier-Halloran*, 193 W. Va. at

696, 458 S.E.2d at 788 (permitting circuit court to rely on "affidavits" from the Tax Commissioner which "explain[] [his] course of conduct or grounds for [its] decision."). But these are "limited" to circumstances where such additional evidence is necessary to "explain the [agency's] course of conduct or grounds of the decision." *Id.* And here, Antero's new exhibits do not fall within the limited scope of this Court's review. Instead, relate to arguments not raised below and subsequent events unrelated to the tax year at issue. Antero's exhibits (and its arguments from these exhibits) should be rejected.

III. ANTERO'S CRITICISMS OF THE BOARD'S DECISION ARE WITHOUT MERIT.

Even if Antero arguments are considered, they should be rejected as meritless.

a. Antero's APA claims are without merit.

Antero argues that the exclusion of its post-production expenses violates the APA by "'grossly' overstat[ing] the value" of its wells in violation of statutory "true and actual" value requirements. Petr's Br. at 6. It also argues that the Tax Commissioner's refusal to apply the *2020 Notice* retroactively to the 2018 tax year is arbitrary and capricious. *Id.*

i. Consol *is controlling and authorizes the exclusion of Antero's post-production expenses.*

But *Consol* affirmed the Tax Commissioner's authority to not deduct Antero's post-production expenses. By rule, the only expenses that are deductible are the "ordinary expenses" "directly related to the maintenance and production of" gas or oil. W. Va. Code R. § 110-1J-3.16. For nearly thirty years, post-production expenses have been treated as non-deductible. Tax Br. Ex. A (Hoover Aff'd ¶ 9). *Consol* acknowledged that the Tax Commissioner considered these expenses as "not 'directly related" to maintenance or production and therefore, non-deductible. And it concluded that this position was not "arbitrary, capricious, or manifestly contrary to" statutory true and actual value requirements. *Consol,* 242 W. Va. at 223, 832 S.E.2d at 149.

Antero tries to avoid *Consol* by arguing that the *2020 Notice* permits the deduction of post-production expenses under a "different" part of the appraisal formula than *Consol* addressed. It says *Consol* only considered the definition of "operating expenses," under W. Va. Code R. § 110-1J-3.16, while the *2020 Notice* permits an adjustment of "gross receipts" (for the same post-production expenses) under W. Va. Code R. § 110-1J-3.8. *See* Petr's Br. at 17.

But this is a distinction without a difference. The appraisal formula begins by taking the "gross receipts" reported on producers' returns and subtracting "operating expense." W. Va. Code R. § 110-1J-4.1. Antero argued in *Consol* that its post-production expenses should be included in the definition of "operating expenses" and thus, deducted from reported "gross receipts." *Consol*, 242 W. Va. at 222, 832 S.E.2d at 148. This argument was rejected. *Id.*, at 223, 832 S.E.2d at 149. So, now it contends that it should be permitted to "*adjust*" its gross receipts *before* it reports them to the Tax Commissioner "to account for" those same expenses. Petr's Br. at 17-18. But whether it tries to deduct its post-production expenses after it reports them (as argued in *Consol*) or adjusts for the same expenses before it reports them (as argued now), makes no difference. It is still seeking to subtract its post-production expenses from its gross receipts.

Antero cannot do this. The legislative rule does not provide for such an adjustment. It requires producers to report as "gross receipts" the "total income received from production on any well." W. Va. Code R. § 110-1J-3.8. This reporting must be made "before subtraction of any . . . expenses." *Id.* For decades, the Tax Commissioner has not permitted producers to deduct their post-production expenses from reported gross receipts. Tax Br. Ex. A (Hoover Aff'd ¶ 9). These expenses "are not 'directly related'" to "maintenance and production." W. Va. Code R. § 110-1J-3.16. And *Consol* affirmed that treatment. 242 W. Va. at 223, 832 S.E.2d at 149.

Antero has not presented "some urgent and compelling reason" to depart from *Consol*. *Dailey v. Betchtel Corp.*, 157 W. Va. 1023, 1029, 207 S.E.2d 169, 173 (1974). Nor has it demonstrated "changing conditions or serious judicial error in [*Consol*'s] interpretation" that is "sufficient to compel deviation from" *stare decisis*. *State ex rel. W. Va. Dep't of Transp. v. Reed*, 228 W. Va. 716, __, 724 S.E.2d 320, 323 (2012). *Consol*'s conclusion is controlling. The exclusion of Antero's post-production expense is not "arbitrary and capricious" and it does not overvalue Antero's wells. *Consol*, 242 W. Va. at 223, 832 S.E.2d at 149.

ii. *The* 2020 Notice *is void, ineffective, and properly withdrawn.*

A. Antero tries to avoid *Consol* by arguing that the *2020 Notice* is an interpretive rule that "changes a prior agency interpretation" the court affirmed. Petr. Br. at 15. It argues that the *2020 Notice* allows deductions for "actual postproduction expenses" by permitting producers to "adjust[]" their gross receipts to account for them. Petr's Br. at 6 & 17.

The *2020 Notice* cannot change the longstanding treatment of post-production expenses. On October 9, 2020, Mr. Steager properly concluded that the *2020 Notice* must be withdrawn because it was "issued without legal authority, was void, and is ineffective." Petr's Br. Ex. B. He reached this conclusion because (1) the *2020 Notice* affected a substantive change that must be implemented by either a legislative rule or statute and (2) it violated the procedures for promulgating any rule (even an interpretive rule). Petr's Br. Ex. B.

Both conclusions are correct. State officials only have the authority "expressly or implicitly" conferred by their enabling statutes. *State ex rel. Hoover v. Smith*, 198 W. Va. 507, 512, 482 S.E.2d 124, 129 (1997). Most officials (including the Tax Commissioner) cannot make changes to their "standard[s] or statement[s] of policy or interpretation of general application" except by promulgating a rule through the APA. *Id.* § 29A-1-2(j) (defining a rule); *id.* § 29A-3-1. Rules that "grant[] or den[y] a specific benefit" or are "determinative on any issue affecting constitutional, statutory or common law rights, privileges or interests" are considered substantive and may only be promulgated as "legislative rules." *Id.* § 29A-1-2(e).

To promulgate a legislative rule, an agency must comply with robust rulemaking procedures. It must obtain the written consent of the cabinet secretary under which it is incorporated. W. Va. Code § 5F-2-2(a)(13). Then, it must file a notice of proposed rulemaking and the text of the proposed rule in the State Register. *Id.* § 29A-3-5. The notice must provide the public an opportunity for comment. *Id.* Once the period for public comment closes, the agency must "respond to [the] public comment[s]" it received and then re-file the proposed rule in the State Register. *Id.* This filing is deemed as an application to the Legislature for permission to promulgate the proposed legislative rule, *id.* § 29A-3-9, and the rule cannot be enforced until (1) it is authorized by the Legislature and (2) the promulgating agency files a final rule in the State Register which fixes its prospective effective date. *Id.* § 29A-3-13(b).

B. The *2020 Notice* plainly exceeded the Tax Commissioner's statutory authority because it purported to affect a substantive change without compliance with legislative rulemaking procedures. *First*, it changed the way post-production expenses were treated. Prior to the *2020 Notice*, the Tax Commissioner excluded post-production expenses from the operating expense deduction. *Consol*, 242 W. Va. at 221, 832 S.E.2d at 147. The *2020 Notice* purported to change this by allowing producers to adjust gross receipts to account for the same post-production expenses. Petr's Br. Ex. A. *Second*, this change is plainly substantive. Like a legislative rule, the *2020 Notice* purported to grant a specific benefit to producers: it authorizes them "adjust" their gross receipts to "approximate" those they would have received if their sales occurred at the field line. Petr's Br. Ex. A. Antero says this specific benefit would permit it to deduct $946,500 from the gross receipts of each well. Petr's Br. at 2. Antero also argues that the *2020 Notice* should be "determinative" of its "constitutional [and] statutory . . . rights, privileges [and] interests." W. Va. Code § 29A-1-2(e); *see* Petr's Br. at 20 (arguing that the notice should entitle it to a deduction of post-production expenses). The *2020 Notice* similarly purported to be "determinative" of the

Ritchie County's authority to collect property taxes for the 2021 tax year. The *2020 Notice* did not simply "provide information or guidance" like an interpretive rule, W. Va. Code § 29A-1-2(c), or as Antero's description of the notice as "guidance" or "instructions" suggests. *See, e.g*., Petr's Br. at 5, 18. The purported effect of the *2020 Notice* was plainly substantive.

The proper way to enact such substantive changes is by legislative rule or by statute. Petr's Br. Ex. B. House Bill 2581 demonstrates this point. There, the Legislature prospectively redefined the "[a]ctual annual operating costs" deduction to include the "gathering, compression, processing, separation, fractionation, and transportation charges" that were previously excluded from the appraisal formula. W. Va. Acts 2021, c. 261, *amending* W. Va. Code § 11-1C-10(d)(3)(B) (Apr. 10, 2021). But it made this change in open session and by statute.

In stark contrast, the *2020 Notice* did not even comply with legislative rulemaking procedures. It was not promulgated with the Cabinet Secretary of the Department of Revenue's "written consent." W. Va. Code §§ 5F-2-2(a)(13), 5F-2-1(j)(1). Mr. Steager did not file a notice of rulemaking or the text of the *2020 Notice* in the State Register, *id.* § 29A-3-5, and he did not give the public an opportunity for prior comment. *Id.* § 29A-3-5. He also did not submit the *2020 Notice* for approval by the Legislature. *Id.* § 29A-3-13. He simply issued it to producers.

The consequence of this is clear: where agencies fail to utilize appropriate rulemaking procedures, the rule is "void and ineffective." *Coordinating Council*, 209 W. Va. at 284, 546 S.E.2d at 464. In *Coordinating Council*, the Tax Commissioner "attempted to levy [a] tax" on certain health care providers "after a lengthy period of not" doing so. 209 W. Va. 274, 283, 546 S.E.2d 454, 463 (2001). But after five years, the Tax Commissioner changed his mind and notified the providers of their tax liability by "issu[ing] a letter." *Id.* at 279, 546 S.E.2d at 459. This Court found that "by simply issuing a letter to the affected taxpayers," the Tax Commissioner violated the APA. *Id.* at 283, 546 S.E.2d at 463. The letter "'affected private rights, privileges or interests' and involve[d] the . . . 'implementation, extension, application, or interpretation' of the law." *Id.* at 284, 546 S.E.2d at 464 (internal alterations omitted). So, the letter "constitute[d] an agency rule that was required to comply with" APA rulemaking procedures. *Id.* And "[u]ntil" it did so, the letter "remain[ed] a nullity." Syl. Pt. 6, *id.* at 276, 546 S.E.2d at 456.

C. Antero disputes this consequence. It argues that the failure to use legislative rulemaking procedures "ends the inquiry" and proves that the *2020 Notice* was an "interpretive rule" under the APA. Petr's Br. at 10. But Antero has no authority for this conclusion. Rather, when a rule "grants or denies a specific benefit" or "is determinative on any issue affecting constitutional, statutory, or common law rights, privileges or interests," the rule "*is a legislative rule*," W. Va. Code 29A-1-2(e) (emphasis added), regardless of the agency's selected process for its issuance. For example, in *Chico Dairy Co. v. W. Va. Human Rights Comm'n*, the agency promulgated a rule that expanded the statutory definition of a "handicapped person." 181 W. Va. 238, 242, 382 S.E.2d 75, 79 (1989). In doing so, it utilized interpretive rulemaking procedures and labeled the rule as "interpretive." *Id.* But the court rejected that label. *Id.* at 244, 382 S.E.2d at 81. It found that the rule "extended [] statutory definition[s]", "confer[ed] a right not provided" by the statute, and "affect[ed] private rights and purports to regulate private conduct." *Id.* Thus, *Chico Dairy* concluded that the rule was "legislative" and not "interpretive." *Id.* Because the agency used interpretive rule procedures and had not "submitted" the rule for the approval of the Legislature, *Chico Dairy* also found that the rule was unenforceable and had "no effect" under the APA. *Id.*

Likewise, the Tax Commissioner's "selected process" for issuing the *2020 Notice* is irrelevant. Like a legislative rule, the notice plainly purports to grant "a specific benefit" to producers. W. Va. Code § 29A-1-2(e). And like a legislative rule, Antero argues that it is "determinative" of its "constitutional [and] statutory" rights to millions of dollars in tax deductions. *Id.* But Mr. Steager failed to submit the *2020 Notice* to the Legislature for approval.

So, it cannot remain effective under the APA and was properly withdrawn.

iii. *If the* 2020 Notice *was an interpretive rule, it remains ineffective and void.*

Antero tries to skirt the APA's rulemaking procedures by claiming that the *2020 Notice* was an "interpretive rule." Petr's Br. at 10. This claim is unfounded. The *2020 Notice*'s effect is plainly legislative. W. Va. Code § 29A-1-2(e)(3). Even if it was an interpretive rule, it remains void because Mr. Steager did not follow the APA procedures required to issue any rule. All rules must be promulgated "only in accordance with" the APA. W. Va. Code § 29A-1-3. Non-legislative rules (including interpretive rules) "need not go through the legislative authorization process." *Appalachian Power*, 195 W. Va. at 583, 466 S.E.2d at 434. But they must comply with other demands of the APA. Petr's Br. Ex. B. To issue an interpretive rule, an agency must obtain the "written consent" of its cabinet secretary. W. Va. Code § 5F-2-2(a)(13). Then it must file a notice of proposed rulemaking and the text of the proposed rule in the State Register. *Id.* § 29A-3-4. The notice must provide the public time for comments. *Id.* § 29A-3-5. And the agency must "respond to [the] public comment[s]." *Id.* Only then can the agency finally adopt an interpretive rule by re-filing it "with [a] notice of adoption in the State Register." *Id.* § 29A-3-8(b).

The *2020 Notice* complied with none of these requirements. Petr's Br. Ex. B. It was simply issued to producers and published on the Tax Department's website. As with legislative rules, the failure to issue the *2020 Notice* in "accordance with" the APA was fatal to its validity. The APA is plain: "*every rule* . . . shall be promulgated . . . *only in accordance* with this article and shall be and *remain effective only to the extent* that it has been or is promulgated in accordance with this article." W. Va. Code § 29A-3-1 (emphasis added). The *2020 Notice* was not issued according to the APA. It is plainly void and ineffective, and was necessarily withdrawn. Petr's Br. Ex. B.

iv. Antero's reasons for ignoring the Withdrawal *are unavailing.*

Antero contends that the *2020 Notice* remains effective for four reasons. But each is wrong.

First, it argues that the *Withdrawal* is a concession. By asserting that the *2020 Notice* was not issued using "legislative rule-making [or] statutory procedures," Petr's Br. Ex. B, Antero says that the Tax Commissioner has admitted that it must be an interpretive rule. Petr's Br. at 12. This is not true. The *Withdrawal* recognized that the *2020 Notice* was issued without "[e]ven the less-robust notice and comment requirements for other rules." Petr's Br. Ex. B. The failure to use APA procedures does not prove that the *2020 Notice* is interpretive, it proves that it is invalid.

Second, Antero says that the *Withdrawal* was not "reasoned" and was "implausible." Petr's Br. at 13. It compares the *Withdrawal* to cases where agencies failed to "identify any statutory" basis for their actions. Petr's Br. at 13 & n.56 (quoting *Casa De Md. v. U.S. Dep't of Homeland Sec.*, 924 F.3d 684, 704-05 (4th Cir. 2019)). But the *Withdrawal* identified several sections of the APA that the *2020 Notice* violated. It also explained why these violations invalidated the notice and required its withdrawal. Petr's Br. Ex. B. The *Withdrawal* was well reasoned.

Third, Antero contends that the *Withdrawal* is inconsistent. It notes that *Consol* deferred to the Tax Commissioner's exclusion of post-production expenses even though this construction was never formalized in a rule. From this, it reasons that Mr. Steager did not need to promulgate a rule to provide producers an adjustment of gross receipts. Petr' Br. at 18-19.

Antero misunderstands the basis for the deference provided in *Consol*. True, when an agency properly promulgate a legislative rule that interprets a statute it is given deference unless it "exceed[s] its constitutional or statutory authority or is arbitrary or capricious." Syl. Pt. 6, *Murray Energy Corp. v. Steager*, 241 W. Va. 629, 632, 827 S.E.2d 417, 419 (2019). But that is not the only way agencies interpret their statutes or rules. And it is not the only time courts give such interpretations deference. Agencies are also empowered to perform administrative and executive functions. To do so, they often must construe and interpret their statutory and regulatory authority to fit the circumstances of a particular case. An agency may not modify or rewrite its rules "under the guise of 'interpretation.'" Syl. Pt. 5, *Consol*, 242 W. Va. at 213, 832 S.E. 2d at 137. But courts "examine [such] regulatory interpretations" with "appropriate deference to agency expertise and discretion." *W. Va. Emp'rs' Mut. Ins. v. Bunch Co*., 231 W. Va. 321, 332, 745 S.E.2d 212, 223 (2013). As long as the agency has acted "consistent with the plain meaning of [its]" statutes, *id.*, its "longstanding, consistent interpretation[s]" are "entitled to judicial deference." *Amedisys W. Va. v. Pers. Touch Home Care of W. Va*., __ W. Va. __, 859 S.E.2d 341, 358 (2021).

Similarly, *Consol* appropriately deferred to the Tax Commissioner's longstanding exclusion of post-production expenses. "Ascertaining [the] value of property" is "primarily an 'executive' or 'administrative function.'" Syl. *Norfolk & W. Ry. Co. v. Bd. of Pub. Works*, 124 W. Va. 562, 21 S.E.2d 143, 143 (1942). Each year, the Tax Commissioner performs that function by reviewing producers' reported gross receipts, W. Va. Code § 11-6K-4, and appraising each well. *Id.* § 11-6K-6. To do so, he must apply statutes and legislative rules to the particulars of each appraisal. For nearly thirty years, he did so without deducting post-production expenses. Tax Br. Ex. A (Hoover Aff'd ¶ 9). So when he appraised Antero's property in 2018, he treated its post-production expenses the same way and excluded them. *Consol* properly deferred to that decision because it was not "arbitrary, capricious, or manifestly contrary to the enabling statute." *Consol*, 242 W. Va. at 223, 832 S.E.2d at 149. But that does not mean that the Tax Commissioner can publish changes to longstanding "standard[s] or statement[s] of policy or interpretation of general application" without complying with rulemaking procedures. W. Va. Code § 29A-1-2(j). For such statements, he must promulgate a rule. *Coordinating Council*, 209 W. Va. at 284, 546 S.E.2d at 464. He failed to do so when he issued the *2020 Notice*, so it was "void and ineffective." *Id.*

Fourth, Antero contends that the *Withdrawal* should be disregarded because it "entirely failed to consider reliance interests." Petr's Br. at 19. This is also not true. The *Withdrawal* explicitly considered the "substantial and material . . . public and private interest" that the *2020 Notice* had unsettled. Petr' Br. Ex. B. Antero ignores this part of the *Withdrawal*. Petr's Br. at 19.

Antero's reliance is also contrary to settled West Virginia law. Its reliance on the *2020 Notice* is entirely unilateral. A "unilateral expectation . . . does not create a" protected "interest." *W. Va. Bd. of Ed. v. Marple*, 236 W. Va. 654, 666, 783 S.E.2d 75, 87 (2015). On its face, the *2020 Notice* has no application to prior tax years. And as Antero admits, the Tax Commissioner has consistently disputed Antero's claim that it applies retroactively. Petr's Br. at 7. Even for tax year 2021 (where the notice at least purported to apply) reliance on it was not settled. The tentative appraisal for producing wells were not due until December 1, 2020, and the final appraisal were not due until December 15, 2020. W. Va. Code §§ 11-6K-4(e)(1), 11-6K-6(a). Before then, changes to appraisal are both statutorily authorized and legitimately expected. *See, e.g.*, *id.* § 11-6K-4(e)(1). The Tax Commissioner withdrew the *2020 Notice* prior to these deadlines. Antero may have unilaterally wished that the *2020 Notice* applied, but that desire was clearly unfounded. Such unilateral expectations are not the basis for protected interests.

Also, it is well-settled that Antero cannot rely on Mr. Steager's invalid or unauthorized actions. The State "is not bound by the legally unauthorized acts of its officers." Syl. Pt. 3, *Freeman v. Polling*, 175 W. Va. 814, 815, 338 S.E.2d 415, 417 (1985). Likewise, "all persons"—including Antero—"must take note of the legal limitations" of State officials' "power and authority," *id.*, and they "may not rely on" official's conduct that is "contrary to law." *Id.* at 819, 338 S.E.2d at 420. This principle "ensure[s] that" a public official's mistakes do not "thwart[]" the "will" of the Legislature. *Id.* at 819, 338 S.E.2d at 420.

The Legislature has willed that "all rules 'be promulgated" "only in accordance with'" the APA. W. Va. Code § 29A-3-1. For legislative rules, this requires compliance with the legislative authorization process. *Id.* § 29A-3-13. Other rules (including interpretive rules) must comply with prior public notice and comment provisions. W. Va. Code §§ 29A-3-4, 29A-3-5, & 29A-3-8. And any rule that ignores or bypasses these requirements is "void and ineffective." *Coordinating Council*, 209 W. Va. at 284, 546 S.E.2d at 464. The *2020 Notice* did not comply with legislative rulemaking requirements, and it failed to comply with "[e]ven the less-robust notice and comment requirements for other rules." Petr' Br. Ex. B. Antero "must take note of the legal limit[s]" of the former Tax Commissioner's rulemaking authority, Syl. Pt. 3, *Freeman*, 175 W. Va. at 815, 338 S.E.2d at 417, and where those limits are exceeded, Antero cannot rely on his conduct.

v. Even if it is valid, the 2020 Notice *cannot apply retroactively.*

A. Even if its invalidity was not apparent, the *2020 Notice* cannot be applied retroactively because it "expressly prescribed" its prospective "reach" to the 2021 tax year. *Pub. Citizens, Inc. v. First Nat.l Bank in Fairmont*, 198 W. Va. 329, 543, 480 S.E.2d 538, 334 (1996). When statute do so, "there is no need to resort to judicial default rules." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 279 (1994). The enactment is applied prospectively as written. *Id.*

B. But assuming such directions were lacking, the *2020 Notice* could not have applied to past tax years because the APA only permits prospective rules. The APA defines a rule as a "standard or statement of policy or interpretation of general application and *future effect*." W. Va. Code § 29A-1-2(j) (emphasis added). The definition applies to legislative rules and interpretive rules. *Id.* And this Court has noted that an agency may only "revise or adopt interpretive rules prospectively." *Appalachian Power*, 195 W. Va. at 583 n.8, 466 S.E.2d at 434 n.8.

Federal precedent similarly bars retroactive agency rules. Like the State APA, federal law defines an agency rule as "an agency statement of general or particular applicability and *future effect*." 5 U.S.C. § 551(4) (emphasis added). From this definition, federal courts have consistently concluded that "the APA requires that . . . rules be given future effect only," *Georgetown Univ. Hosp. v. Bowen*, 821 F.2d 750, 757 (D.C. Cir. 1987), *affirmed in* 488 U.S. 204, 208 (1988), and that “retroactive rulemaking” is “forbid[den]” under the federal APA. *Bowen*, 488 U.S. at 208. In fact, Justice Scalia concluded in *Bowen*’s concurrence that “[t]he only plausible reading of the” words “*future effect*” in 5 U.S.C. § 551(4) was that Congress meant “that rules have legal consequences only for the future.” *Bowen*, 488 U.S. at 216 (J.Scalia, concurring) (emphasis in original). Likewise, the Court of Appeal for the District of Columbia has consistently concluded that “rules” adopted under the Federal APA are “prospective in application only,” *Retail, Wholesale & Dep’t Store Union, AFL-CIO v. N.L.R.B.*, 466 F.2d 380, 388 (D.C. Cir. 1972), and that “interpretive rules, no less than legislative rules, are subject to [the] ban on retroactivity.” *Health Ins. Ass’n of Am. v. Shalala*, 23 F.3d 412, 423 (D.C. Cir. 1994).

Courts consider a law “retroactive” if it “operates upon transactions which have been completed or upon rights which have been acquired or upon obligations which have existed prior to its passage.” Syl. Pt. 5, *Martinez v. Asplundh Tree Expert Co*., 239 W. Va. 612, 613, 803 S.E.2d 582, 583 (2017). Federal courts apply a similar test to determine if an agency’s rule violates the federal APA’s ban on retroactive rules. They consider “whether the new [rule] attaches new legal consequences to events completed before [the rule’s] enactment,” *Nat’l Min. Ass’n v. Dep’t of Labor*, 292 F.3d 849, 860 (D.C. Cir. 2002), or “changes the legal landscape.” *Arkema Inc. v. E.P.A.*, 618 F.3d 1, 7 (D.C. Cir. 2010). If it does, the agency may only apply the rule retroactively if it has “express congressional authority” to do so. *Nat’l Min.*, 292 F.3d at 859.

Applied here, Antero is trying to enforce the withdrawn *2020 Notice* retroactively to events “completed” and “obligations which have existed prior to” the notice’s issuance. The *2020 Notice* purports to allow producers to adjust the gross receipts reported on their August 3, 2020, tax returns for the 2021 tax year. Antero was obligated to complete similar returns for the 2018 tax year in August of 2017. W. Va. Code § 11-6K-1(c). And its payments based on these returns accrued and were due over three years ago. *Id.* § 11A-1-3(a). Antero seeks to apply the *2020 Notice* to alter events "completed" and "obligations" that "existed" on those dates. Syl. Pt. 5, *Martinez*, 239 W. Va. at 617, 803 S.E.2d at 583. This application would clearly "attach new legal consequences" to those events, *Nat'l Min.*, 292 F.3d at 859, and undisputedly "diminish[] [the] substantive rights" of Ritchie County to retain property taxes and potentially "augment[s] [its] substantive" refund "liability" by millions of dollars. Syl. Pt. 4, *Martinez*, 239 W. Va. at 617, 803 S.E.2d at 583. This application would plainly be retroactive and is expressly prohibited by the APA.

C. Antero tries to avoid the APA's ban on retroactive rules by claiming that the *2020 Notice* "only clarif[ies]" that post-production expenses could be deducted all along. Petr's Br. at 8-9 (citing *Williams v. Dep't of Motor Vehicles*, 187 W. Va. 406, 408, 419 S.E.2d 474, 478 (1992)). It says a new federal rule may be applied to pending disputes where it "clarifies" or "reaffirms" an agency's longstanding position. Pet'r Br. at 18 n.81 (citing to *Clay v. Johnson*, 264 F.3d 744, 749 (7th Cir. 2001)). But such circumstances do not arise where a rule "attaches new legal consequences to" prior events, *Nat'l Min.*, 292 F.3d at 860, "changes the law," or is "patently *inconsistent* with" an agency's prior interpretation. *Clay*, 264 F.3d at 749 (emphasis added). There, federal agencies "may not promulgate retroactive rules absent express congressional authority." *Nat'l Min.*, 292 F.3d at 859. The text of the Federal APA is clear: both legislative and interpretive rules "must be of '*future effect*.'" *Health Ins.*, 23 F.3d at 423.

The same reasoning applies here. The *2020 Notice* cannot be applied to past tax years because it is patently inconsistent with the Tax Commissioner's prior disallowance of post-production expenses. *Cf. Consol*, 242 W. Va. 223, 832 S.E. 2d at 149. A change of this position cannot be effected retroactively "absent express [Legislative] authority." *Nat'l Min.*, 292 F.3d at 859. And here, the Legislature has only authorized rules that have "future effect." W. Va. Code § 29A-1-2(j). "The only plausible reading of the" words "*future effect*" is that the Legislature meant "that rules have legal consequences only for the future." *Cf. Bowen*, 488 U.S. at 216 (J.Scalia, concurring). And "interpretive rules, no less than legislative rules, are subject to [this] ban on retroactivity." *Cf. Health Ins.*, 23 F.3d at 423. The *2020 Notice* cannot apply retroactively.

b. Antero's due process claims are without merit.

Antero's due process allegations fair no better. It says that the refusal to apply the *2020 Notice* retroactively violates substantive due process. Petr's Br. at 20. But taxation—like any economic regulation—is subject to a "high level of deference" under due process. *Verizon W. Va., Inc. v. W. Va. Bureau of Emp't Programs*, 214 W. Va. 95, 121, 586 S.E.2d 170, 196 (2003). Due process concerns only arise where a State official "act[s] in an arbitrary and irrational way." *Id.* And "only the most egregious official conduct" which "shocks the conscience" is considered "arbitrary in the constitutional sense." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). The continued exclusion of post-production expenses is not arbitrary or capricious in any sense. Rather, the exclusion is based on "a reasonable construction" of the Tax Commissioner's legal authority and is not "arbitrary [or] capricious." *Consol*, 242 W. Va. at 223, 832 S.E.2d at 149.

Nor is it "arbitrary and capricious" in any sense (much less in an "egregious" and conscience-shocking sense) for the *2020 Notice* not to apply retroactively. "Retroactivity is not favored in the law," *Bowen*, 488 U.S. at 471, and must "meet a burden" under due process "not faced by [acts] that [have] only future effects." *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984). This is why even statutes are "presumed to operate prospectively," *Pub. Citizens*, 198 W. Va. at 335, 480 S.E.2d at 545, and agency "rules will not be construed to have retroactive effect unless their language requires this result." *Bowen*, 488 U.S. at 208. And here, the APA only permits rules that have "future effect." W. Va. Code § 29A-1-2(j). Antero's due process rights were plainly not violated when the Tax Commissioner refused to apply the withdrawn *2020 Notice* retroactively. The presumptions against retroactivity and the APA dictate that refusal.

c. Antero's equal protection and commerce clause arguments are meritless.

A. Antero's equal protection claims are contrary to settled law. It argues that the exclusion of post-production expenses violates equal protection because it "artificially inflate[s]" Antero's wells "in relation to local competitor's'" wells. Petr's Br. at 22. But equal protection is "especially deferential" where "complex tax" systems—like the one at issue here—are concerned. *Murray*, 241 W. Va. at 644, 827 S.E.2d at 433. Here, the use of averages "mathematically under- and over-represent certain values" but this does not "create a taxation equality problem for which the Constitution demands a remedy." *Id.* As long as taxes are "rationally related to a legitimate state interest," *Appalachian Power*, 195 W.Va. at 594, 466 S.E.2d at 445, and treat "all persons within" a class "equally," Syl. Pt. 9, *Murray*, 241 W. Va. at 632, 827 S.E.2d at 420, they satisfy equal protection requirements. Taxes are considered "rational" as long as the classifications they create are "neither capricious nor arbitrary." *Id.* at 645, 827 S.E.2d at 433.

Excluding post-production expenses satisfies equal protection. "[A]ll persons within" the class of producers are treated "equally." Syl. Pt. 9, *id.* at 632, 827 S.E.2d at 420. None of them are permitted to deduct their post-production expenses. Nor do the applicable legislative rules create classes based on in-state or out-of-state sales. They classify deductible expenses based on their relationship to production. W. Va. Code R. § 110-1J-3.16 ("operating expenses" are those "directly related to the maintenance and production"). And *Consol* has already concluded that excluding post-production expenses from the operating expense deduction is not "arbitrary [or] capricious." *Consol*, 242 W. Va. at 233, 832 S.E.2d at 149. Antero's equal protection claim is without merit.

B. Antero's dormant commerce clause argument is similarly flawed. A state may run afoul of the commerce clause if it "discriminates" against interstate commerce "facially, in its practical effect, or in its purpose." *Envtl. Tech. Council v. Sierra Club*, 98 F.3d 774, 785 (4th Cir. 1996). But taxes that apply "evenhandedly with only 'incidental' effects on interstate commerce" typically survive commerce clause review unless they impose a burden on interstate commerce that is “clearly excessive in relation to the putative local benefits.” *Oregon Waste Sys., v. Dep’t of Envtl. Quality of State of Or*., 511 U.S. 93, 99 (1994).

Applied here, the exclusion of post-production expenses is “evenhanded” and “does not facially discriminate against interstate” activities. *Am. Trucking Ass’n, v. Mich. Pub. Serv. Comm’n*, 545 U.S. 429, 434 (2005). It does not “treat[]” producers “differently depending on whether” they conduct business “in the State or out of it.” *Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984). Nor do the hearing transcripts Antero references reveal any discriminatory purpose. *See, e.g*., Petr’s Br. Ex. F. Producers’ property is simply not taxed “more heavily when it crosses state lines.” *Oregon Waste*, 511 U.S. at 99. No producer is permitted to deduct their post-production expenses. *Cf. Consol*, 242 W. Va. at 216, 832 S.E.2d at 142. And the distinction between deductible and non-deductible expenses is not based on in-state or out-of-state sales. Rather, whether an expense is deductible depends on its relationship “to the maintenance and production” of gas. W. Va. Code R. § 110-1J-3.16. Ordinary expenses that are “directly related” to maintenance and production are deductible—those that are not “directly related” are not deductible. *Id.* In this system, “cross[ing] state lines” is irrelevant: post-production expenses are excluded whether they are incurred in West Virginia or in any other state.

Antero also says that the exclusion of post-production expenses subjects it to “the risk of multiple taxation.” Petr’s Br. at 24. But the risk of “multiple taxation” only arises where commerce “is subject to more than one tax on its full value.” *Japan Line, Ltd. v. Los Angeles Cnty*., 441 U.S. 434, 446 (1979). For property taxes, “multiple taxation is possible only if some [other] jurisdiction . . . may constitutionally impose an ad valorem tax” on the same property. *Central R. Co. of Pa. v. Pennsylvania*, 370 U.S. 607, 612 (1962). But here, the property being taxed are the wells entirely located in Ritchie County. The formula uses net receipts as a factor, but its goal is to determine the “true and actual value” of the property located in that county. W. Va. Code § 11-6K-1. The exclusion of post-production expenses is not "manifestly contrary" to that goal. *Consol*, 242 W. Va. at 223, 832 S.E.2d at 149. Nor does the risk of multiple taxation arise because Antero may have to pay "corporate income and/or gross receipts taxes to another state." Petr's Br. at 24. Interstate entities are often subject to "a confluence of taxes." *Okla. Tax Comm'n v. Jefferson Lines, Inc*., 514 U.S. 175, 192 (1995). But this is merely the "accidental incident of interstate commerce being subject to two different taxing jurisdictions" and not "a structural evil" that offend the commerce clause. *Id.* Antero's commerce clause arguments are without merit.

CONCLUSION

For the foregoing reasons, this Court should adopt the revaluations submitted on February 9, 2021, and set the total value of Antero's wells in Ritchie County for the 2018 tax year at $421,359,327.

Respectfully submitted,

MATTHEW R. IRBY, WEST VIRGINIA STATE TAX COMMISSIONER, ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

/s/ Sean M. Whelan
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IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

ANTERO RESOURCES CORPORATION,

Petitioner,

v. **Civil Action No. 18-AA-1**
Honorable Christopher C. Wilkes
Presiding Judge

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,
ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

CERTIFICATE OF SERVICE

I, Sean M. Whelan, Assistant Attorney General, do hereby certify that the foregoing "*Brief of Respondents Matthew R. Irby, West Virginia State Tax Commissioner and Arlene Mossor, Assessor of Ritchie County*" and "Exhibits" were electronically filed on the 24th day of September, 2021, through the West Virginia electronic filing system, which will send notification of this pleading to:

John J. Meadows, Esq.
Ancil G. Ramey, Esq.
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588
Counsel for Petitioner

Tessa Bowers, Esq.
Law Clerk to the Honorable Judge
Christopher Wilkes
Business Court Division
Berkeley County Judicial Center
380 West South Street
Martinsburg, WV 25401

/s/ Sean M. Whelan
Sean M. Whelan (WVSB #12067)

E-FILED | 9/24/2021 2:44 PM
CC-43-2018-AA-1
Ritchie County Circuit Clerk
Melanie Wilson

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

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v.

Civil Action No. 18-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,
ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

BRIEF OF RESPONDENTS MATTHEW R. IRBY, WEST VIRGINIA STATE TAX COMMISSIONER AND ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY

EXHIBIT A

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 18-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,
ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

AFFIDAVIT OF CYNTHIA R. HOOVER

1. My name is Cynthia R. Hoover. I am currently employed at the Office of the Kanawha County Assessor, Special Properties Section.

2. Prior to this, I had worked at the Property Tax Division of the West Virginia State Tax Department for approximately 30 years

3. From December 16, 2010, to June 30, 2021, I was employed as the Tax & Revenue Manager of the West Virginia State Tax Department, Property Tax Division, Special Properties Section.

4. As the Tax & Revenue Manager, I was familiar with the valuation of Antero Resource's producing oil and gas wells located in Ritchie County, West Virginia, for the 2018 tax year.

5. I valued Antero Resource's producing Marcellus Shale horizontal oil and gas wells for the 2018 tax year.

6. Initially, I valued the producing gas wells using an average annual industry operating expense of 20% of gross receipts derived from natural gas production not to exceed $175,000 per well for Marcellus Shale horizontal wells.

7. For wells that only produced oil, I utilized an Average Annual Industry Operating Expense of 35% of gross receipts derived from oil production not to exceed $5,750 per well.

8. The cost of gathering, compression, processing, or transportation were not included in the average annual industry operating expense deduction during the 2018 tax year

9. During the approximately 30 years I worked at the Property Tax Division of the West Virginia State Tax Department, the cost of gathering, compression, processing, or transportation were never included in the average annual industry operating expense deduction.

10. To value Antero's wells for the 2018 tax year, I used the same methodology applied by the Property Tax Division to value every producing Marcellus Shale horizontal well in the state for the 2018 and 2019 tax years.

11. Based on that methodology, I initially determined that the wells Antero owned in Ritchie County for the 2018 tax year had a combined value of $421,796,605.

12. In June of 2019, the West Virginia Supreme Court issued its decision in *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E. 2d 135 (2019).

13. In *Consol Energy*, the Supreme Court of Appeals ruled that the Tax Commissioner could not utilize an average annual industry operating expense deduction of 20% of gross receipts not to exceed $175,000 per well.

14. Furthermore, the Supreme Court of Appeals ruled that the Tax Commissioner must utilize a standard dollar deduction of $175,000 per well for Marcellus Shale horizontal wells for the 2017 tax year.

15. Based on *Consol Energy*, I re-valued all of Antero Resource's Marcellus Shale producing oil and gas wells in Ritchie County for the 2018 tax year.

16. For wells that produced only natural gas, I utilized a deduction of $175,000 per well and disregarded the calculation of 20% percent of gross receipts derived from natural gas.

17. For wells that produced only oil, I utilized a deduction of $5,750 per well and disregarded the calculation of 35% percent of gross receipts derived from natural gas.

18. Antero's Marcellus Shale wells in Ritchie County produce both oil and natural gas. During the 2018 tax years, such wells received a $5,750 deduction for oil and a $175,000 deduction for gas as required by Administrative Notice 2018-08.

19. I revalued all of Antero Resource's producing Marcellus Shale oil and gas wells in Ritchie County using this methodology in Paragraphs 16 through 18.

20. Using this revaluation methodology, the combined total of my initial valuation for the wells in Ritchie County for the 2018 tax year was reduced by $415,910 to $421,359,327.

21. A copy of the spreadsheet is attached which identifies the revised valuation for every Antero Resources' well on appeal in this matter.

22. In my opinion, I have accurately re-valued Antero Resource's producing Marcellus Shale oil and gas wells located in Ritchie County for the 2018 tax year in accordance with the Supreme Court of Appeals decision in *Consol Energy*.

This Affidavit is filed in support of the *Response Brief of Matthew R. Irby, the West Virginia State Tax Commissioner, Arlene Mossor, the Ritchie County Assessor*, in regard to the above-referenced civil action.

Further the Affiant sayeth naught. Dated this 22 day of September, 2021.

Cynthia R. Hoover

Cynthia R. Hoover
Former Tax & Revenue Manager
West Virginia Property Tax Division
Special Properties Section

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

Taken, subscribed and sworn to before me this 22 day of September, 2021.

My commission expires June 23, 2023.

Regina Bell

NOTARY PUBLIC

Official Seal
Notary Public, State of West Virginia
Regina Bell
20 - 127th Street
Charleston, WV 25301
My Commission Expires June 23, 2023

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 18-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,
ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

BRIEF OF RESPONDENTS MATTHEW R. IRBY, WEST VIRGINIA STATE TAX COMMISSIONER AND ARLENE MOSSOR, ASSESSOR OF RITCHIE COUNTY

EXHIBIT B

State of West Virginia
Office of the Attorney General
Tax & Revenue, Legislative Claims Commission and Transportation Division
State Capitol, Building 1, Room W-435, 1900 Kanawha Boulevard East
Charleston, WV 25305

Patrick Morrisey
Attorney General

(304) 558-2522
Fax (304) 558-2525

February 9, 2021

Honorable Rose Ellen Cox, Circuit Clerk
Ritchie County Circuit Clerk's Office
115 E. Main Street, Room 301
Harrisville, WV 26362

Re: *Antero Resources Corporation, v. Dale W. Steager, State Tax Commissioner, Arlene Mossor, Assessor of Ritchie County, County Commission of Ritchie County,*
Civil Action No.: 18-AA-1

Dear Ms. Cox:

Enclosed please find the "*Notice of Transmittal of Revaluations For Producing Oil and Gas Wells for the 2018 Tax Year*" to be filed in the above-referenced matter. A copy of the same has been provided to counsel for the Petitioner and to the Respondent as evidenced in the attached certificate of service.

Thank you for your attention to this matter.

Sincerely,

L. Wayne Williams / PLS

L. Wayne Williams
Assistant Attorney General

LWW/dbt
Enclosure
cc: Tessa Bowers, Esq., Law Clerk to the Honorable Judge Christopher Wilkes
John J. Meadows, Esq.
Ancil G. Ramey, Esq.
Arlene Mossor, Assessor of Ritchie County
Mark Morton, General Counsel, WV State Tax Department

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
IN THE BUSINESS COURT DIVISION

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 18-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE ARLENE MOSSOR,
Assessor of Ritchie County,
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

NOTICE OF TRANSMITTAL OF REVALUATIONS FOR PRODUCING OIL AND GAS WELLS FOR THE 2018 TAX YEAR

COMES NOW, the Honorable Matthew R. Irby, Acting West Virginia State Tax Commissioner, by counsel, to advise the Business Court that the Tax Department has revalued the producing oil and gas wells located in Doddridge County, Ritchie County, Harrison County and Tyler County, for the 2018 tax year as required pursuant to *Steager v. CONSOL Energy*, 242 W. Va. 209, 832 S.E. 2d 135 (2019).

Counsel advises the Business Court that the revaluations were originally transmitted to all counsel of record by email on April 24, 2020. (Copy attached.) Furthermore, as of February 5, 2021, Antero Resources has not accepted or rejected the revaluations.

A spreadsheet which itemizes the revaluations for every well at issue is attached. The Property Tax Division included all wells in litigation in Doddridge County, Civil Action No. 18-AA-1, Ritchie County, Civil Action No. 18-AA-1, Harrison County, Civil Action No. 18-P-235, and Tyler County, Civil Action No. 18-AA-1, on the same spreadsheet.

Respectfully submitted,

MATTHEW R. IRBY,
ACTING WV STATE TAX COMMISSIONER,

THE HONORABLE ARLENE MOSSOR,
ASSESSOR OF RITCHIE COUNTY,

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL

L. Wayne Williams / Phs.

L. WAYNE WILLIAMS (WVSB# 4370)
ASSISTANT ATTORNEY GENERAL
1900 Kanawha Boulevard, East
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304-558-2522
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L Wayne Williams

From:	L Wayne Williams
Sent:	Friday, April 24, 2020 2:55 PM
To:	'Craig Griffith'; John Meadows; 'jnicol@kaycasto.com'; D. Luke Furbee
Cc:	Delea B. Thomas
Subject:	ANTERO RESOURCES--2018 TY
Attachments:	RE-VALS from Cindi Hoover (M0369691xCECC6).xlsx

All,

I have attached Cindi Hoover's Re-Vals for the 2018 TY for the Antero Resources property tax appeals in:

Harrison County	18-P-235
Doddridge County	18-AA-1
Tyler County	18-AA-1
Ritchie County	18-AA-1

Please review these re-vals with your clients and let me know if your clients will agree. If so, then maybe we can simply enter an agreed order of dismissal with the courts. I will also send these re-vals to the four county assessors.

Let me know what you think.

Stay safe and keep washing your hands. Enjoy your weekends.

Wayne.

County	Well Code	CY	Account#	# of wells	API#	API # for second well (if applicable)	Property Description	State Appraised Value	Value consistent with Supreme Court Decision	Requested Value Reduction	State Antero Appraised Value	State Value consistent with Supreme Court Decision	Difference
Ritchie	10758.1	43	320150036	1	4708510036		Blanche Unit 1H (10758.1)	3,714,956	3,714,956	-	3,714,956	3,714,956	$ -
Ritchie	10223.1	43	320159963	1	4708509963		Anna Unit 2H (10223.1)	2,014,313	2,014,313	-	2,014,313	2,014,313	$ -
Ritchie	10351.1	43	320160027	1	4708510027		Belle Unit 1H (10351.1)	4,149,784	4,149,784	-	4,149,784	4,149,784	$ -
Ritchie	10526.1	43	320160028	1	4708510028		Belle Unit 2H (10526.1)	2,968,887	2,968,887	-	2,968,887	2,968,887	$ -
Ritchie	10440.1	43	320160029	1	4708510029		Belle Unit 3H (10440.1)	4,307,043	4,307,043	-	4,307,043	4,307,043	$ -
Ritchie	10524.1	43	320160060	1	4708510060		Hendershot Unit 1H (10524	3,518,885	3,518,885	-	3,518,885	3,518,885	$ -
Ritchie	10942.1	43	320160062	1	4708510062		Hornet Unit 1H (10942.1)	3,508,997	3,508,997	-	3,508,997	3,508,997	$ -
Ritchie	10937.1	43	320160063	1	4708510063		Hornet Unit 2H (10937.1)	4,359,538	4,359,538	-	4,359,538	4,359,538	$ -
Ritchie	10525.1	43	320160088	1	4708510088		Hendershot Unit 2H (10525	3,436,913	3,436,913	-	3,436,913	3,436,913	$ -
Ritchie	10589.1	43	320170015	1	4708510015		Cairo-Anna Unit 3HRB (105	4,303,932	4,303,932	-	4,303,932	4,303,932	$ -
Ritchie	10442.1	43	320170041	1	4708510041		Blanche Unit 3H (10442.1)	4,395,557	4,395,557	-	4,395,557	4,395,557	$ -
Ritchie	10683.1	43	320170042	1	4708510042		Schmidle Unit 1H (10683.1	4,897,095	4,897,095	-	4,897,095	4,897,095	$ -
Ritchie	10523.1	43	320170057	1	4708510057		Chandos Unit 2H (10523.1)	4,507,228	4,507,228	-	4,507,228	4,507,228	$ -
Ritchie	10939.1	43	320170078	1	4708510078		MIRACLE UNIT 1H	4,145,254	4,145,254	-	4,145,254	4,145,254	$ -
Ritchie	10940.1	43	320170079	1	4708510079		MOATS UNIT 1H	3,823,721	3,823,721	-	3,823,721	3,823,721	$ -
Ritchie	10941.1	43	320170080	1	4708510080		MOATS UNIT 2H	4,063,063	4,063,063	-	4,063,063	4,063,063	$ -
Ritchie	10938.1	43	320170082	1	4708510082		Myrtle Unit 2H (10938.1)	3,298,266	3,298,266	-	3,298,266	3,298,266	$ -
Ritchie	10567.1	43	320170089	1	4708510089		MIRACLE UNIT 2H	5,859,947	5,859,947	-	5,859,947	5,859,947	$ -
Ritchie	10636.1	43	320170105	1	4708510105		Mulvay Unit 1H (10636.1)	5,117,102	5,117,102	-	5,117,102	5,117,102	$ -
Ritchie	10637.1	43	320170106	1	4708510106		Mulvay Unit 2H (10637.1)	4,510,371	4,510,371	-	4,510,371	4,510,371	$ -
Ritchie	10568.1	43	320170140	1	4708510140		Miracle Unit 3H (10568.1)	7,172,737	7,172,737	-	7,172,737	7,172,737	$ -
Ritchie	10657.1	43	320170141	1	4708510141		MOATS UNIT 3H	4,339,607	4,339,607	-	4,339,607	4,339,607	$ -
Ritchie	10694.1	43	320170143	1	4708510143		Ericson Unit 2H (10694.1)	10,845,438	10,845,438	-	10,845,438	10,845,438	$ -
Ritchie	10695.1	43	320170144	1	4708510144		Ericson Unit 3H (10695.1)	5,967,617	5,967,617	-	5,967,617	5,967,617	$ -
Ritchie	11418.1	43	320170146	1	4708510146		Bow Unit 1H (11418.1)	2,356,771	2,356,771	-	2,356,771	2,356,771	$ -
Ritchie	10670.1	43	320170157	1	4708510157		Bow Unit 2H (10670.1)	4,026,618	4,026,618	-	4,026,618	4,026,618	$ -
Ritchie	10686.1	43	320170163	1	4708510163		Musgrave Unit 1H (10686.1	8,091,068	8,091,068	-	8,091,068	8,091,068	$ -

Ritchie	10687.1	43	320170164	1	4708510164	Noland Unit 1H (10687.1)	4,930,221	4,930,221	-	4,930,221	4,930,221	$	-
Ritchie	10669.1	43	320170165	1	4708510165	Paige Unit 1H (10669.1)	2,708,557	2,708,557	-	2,708,557	2,708,557	$	-
Ritchie	10689.1	43	320170191	1	4708510191	Musgrave Unit 2H (10689.1	8,221,112	8,221,112	-	8,221,112	8,221,112	$	-
Ritchie	10718.1	43	320179962	1	4708509962	Cairo-Anna Unit 1H (10588	3,418,484	3,418,484	-	3,418,484	3,418,484	$	-
Ritchie	10690.1	43	320180098	1	4708510098	Knoll Unit 1H (10690.1)	5,768,463	5,768,463	-	5,768,463	5,768,463	$	-
Ritchie	10692.1	43	320180099	1	4708510099	Penns Park Unit 1H (10692	4,920,686	4,920,686	-	4,920,686	4,920,686	$	-
Ritchie	10693.1	43	320180100	1	4708510100	Penns Park Unit 2H (10693	4,997,163	4,997,163	-	4,997,163	4,997,163	$	-
Ritchie	10656.1	43	320180154	1	4708510154	Caldwell Unit 1H (10656.1	7,327,784	7,327,784	-	7,327,784	7,327,784	$	-
Ritchie	10653.1	43	320180155	1	4708510155	Greenback Unit 1H (10653.	8,797,581	8,797,581	-	8,797,581	8,797,581	$	-
Ritchie	10679.1	43	320180156	1	4708510156	Greenback Unit 2H (10679.	9,579,679	9,579,679	-	9,579,679	9,579,679	$	-
Ritchie	11513.1	43	320180178	1	4708510178	Jackknife Unit 1H (11513.	10,196,622	10,196,622	-	10,196,622	10,196,622	$	-
Ritchie	11514.1	43	320180179	1	4708510179	Jackknife Unit 2H (11514.	10,074,520	10,074,520	-	10,074,520	10,074,520	$	-
Ritchie	11512.1	43	320180180	1	4708510180	Manos Unit 1H (11512.1)	9,463,244	9,463,244	-	9,463,244	9,463,244	$	-
Ritchie	10691.1	43	320180181	1	4708510181	Knoll Unit 2H (10691.1)	6,334,018	6,334,018	-	6,334,018	6,334,018	$	-
Ritchie	11459.1	43	320180185	1	4708510185	Brook Unit 1H (11459.1)	7,952,026	7,952,026	-	7,952,026	7,952,026	$	-
Ritchie	10680.1	43	320180190	1	4708510190	Caldwell Unit 2H (10680.1	9,600,779	9,600,779	-	9,600,779	9,600,779	$	-
Ritchie	10707.1	43	320180196	1	4708510196	McNabb West Unit 1H (1070	10,845,277	10,845,277	-	10,845,277	10,845,277	$	-
Ritchie	10708.1	43	320180197	1	4708510197	McNabb West Unit 2H (1070	9,591,736	9,591,736	-	9,591,736	9,591,736	$	-
Ritchie	10709.1	43	320180198	1	4708510198	McNabb East Unit 3H (1070	8,864,369	8,864,369	-	8,864,369	8,864,369	$	-
Ritchie	10710.1	43	320180199	1	4708510199	McNabb East Unit 4H (1071	11,925,872	11,925,872	-	11,925,872	11,925,872	$	-
Ritchie	11476.1	43	320180213	1	4708510213	Bow Unit 3H (11476.1)	10,777,943	10,777,943	-	10,777,943	10,777,943	$	-
Ritchie	11479.1	43	320180221	1	4708510221	Eppard Unit 1H (11479.1)	7,927,052	7,927,052	-	7,927,052	7,927,052	$	-
Ritchie	11521.1	43	320180244	1	4708510244	Charleston Unit 3H (11521	11,345,962	11,345,962	-	11,345,962	11,345,962	$	-
Ritchie	11524.1	43	320180268	1	4708510268	Charleston Unit 2H (11524	10,748,256	10,748,256	-	10,748,256	10,748,256	$	-
Ritchie	11523.1	43	320180269	1	4708510269	Deem Unit 2H (11523.1)	10,226,745	10,226,745	-	10,226,745	10,226,745	$	-
Ritchie	10207.1	43	1020149960	1	4708509960	Nicholson Unit 2H (10207.	2,256,042	2,256,042	-	2,256,042	2,256,042		-
Ritchie	10724.1	43	1020150002	1	4708510002	Kuhn Unit 1H (10724.1)	1,758,916	1,702,252	56,664	1,758,916	**1,702,266**	$	56,650
Ritchie	10326.1	43	1020150023	1	4708510023	Constable Unit 1H (10326.	5,388,387	5,388,387	-	5,388,387	5,388,387	$	-
Ritchie	10267.1	43	1020159961	1	4708509961	Nicholson Unit 1H (10267.	1,648,626	1,502,415	146,211	1,648,626	**1,502,430**	$	146,196
Ritchie	10275.1	43	1020159964	1	4708509964	O'Neil Unit 1H (10275.1)	2,667,499	2,667,499	-	2,667,499	2,667,499	$	-
Ritchie	10276.1	43	1020159966	1	4708509966	O'Neil Unit 2H (10276.1)	2,031,355	2,028,650	2,705	2,031,355	**2,028,670**	$	2,685
Ritchie	10288.1	43	1020159970	1	4708509970	Prunty Unit 1H (10288.1)	5,075,101	5,075,101	-	5,075,101	5,075,101	$	-
Ritchie	10261.1	43	1020159978	1	4708509978	Pullman Unit 2H (10261.1)	1,314,968	1,104,578	210,390	1,314,968	**1,104,589**	$	210,379
Ritchie	10738.1	43	1020160005	1	4708510005	Ireland Unit 1H (10738.1)	4,595,813	4,595,813	-	4,574,445	4,574,445	$	-

Ritchie	10424.1	43	1020160017	1	4708510017	Allstate Unit 2H (10424.1	2,001,090	2,001,090	-	2,001,090	2,001,090	$	-
Ritchie	10423.1	43	1020160019	1	4.71E+09	McCabe Unit 3H (10423.1)	3,330,704	3,330,704	-	3,330,704	3,330,704	$	-
Ritchie	10566.1	43	1020160045	1	4708510045	Langford Unit 2H (10566.1	4,212,571	4,212,571	-	4,212,571	4,212,571	$	-
Ritchie	10398.1	43	1020160046	1	4708510046	Rufus Unit 1H (10398.1)	5,522,215	5,522,215	-	5,522,215	5,522,215	$	-
Ritchie	10535.1	43	1020169996	1	4708509996	Snodgrass Unit 2H (10535.	2,619,293	2,619,293	-	2,619,293	2,619,293	$	-
Ritchie	10296.1	43	1020169999	1	4708509999	Deberry Unit 1H (10296.1)	4,834,895	4,834,895	-	4,834,895	4,834,895	$	-
Ritchie	10397.1	43	1020170044	1	4708510044	Langford Unit 1H (10397.1	4,708,260	4,708,260	-	4,708,260	4,708,260	$	-
Ritchie	10528.1	43	1020170102	1	4708510102	Duckworth Unit 1H (10528.	4,759,698	4,759,698	-	4,759,698	4,759,698	$	-
Ritchie	10529.1	43	1020170103	1	4708510103	Duckworth Unit 3H (10529.	3,744,887	3,744,887	-	3,744,887	3,744,887	$	-
Ritchie	10530.1	43	1020170138	1	4708510139	Stalnaker Unit 3H (10530.	3,421,667	3,421,667	-	3,421,667	3,421,667	$	-
Ritchie	10531.1	43	1020170139	1	4708510138	Stalnaker Unit 1H (10531.	3,325,246	3,325,246	-	3,325,246	3,325,246	$	-
Ritchie	10280.1	43	1020180204	1	4708510204	Left Fork Unit 1H (10280.	7,676,372	7,676,372	-	7,676,372	7,676,372	$	-
Ritchie	10532.1	43	1020180205	1	4708510205	Left Fork Unit 3H (10532.	7,148,288	7,148,288	-	7,148,288	7,148,288	$	-
Ritchie	10533.1	43	1020180206	1	4708510206	Left Fork Unit 4H (10533.	7,509,853	7,509,853	-	7,509,853	7,509,853	$	-
							421,796,605	421,380,635	415,970	421,775,237	421,359,327	$	415,910

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA
IN THE BUSINESS COURT DIVISION

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 18-AA-1
Honorable Christopher C. Wilkes
Presiding Judge

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE ARLENE MOSSOR,
Assessor of Ritchie County,
THE COUNTY COMMISSION OF RITCHIE COUNTY,

Respondents.

CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General, do hereby certify that the foregoing "*Notice of Transmittal of Revaluations For Producing Oil and Gas Wells for the 2018 Tax Year*" was served upon the following via email correspondence and by depositing a copy of the same in the United States Mail, via first-class postage prepaid, this 9th day of February, 2021, addressed as follows:

John J. Meadows, Esq.
Ancil G. Ramey, Esq.
Steptoe & Johnson, PLLC
P.O. Box 1588
Charleston, WV 25326-1588
Counsel for Petitioner

L. Wayne Williams / PLS
L. WAYNE WILLIAMS

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