

FILED
FEB -8 2022
Candy L. Warner
Tyler Co. Circuit Clerk

EXHIBIT A



Tyler County Commission

ERIC H. VINCENT
COMMISSIONER

MICHAEL V. SMITH
COMMISSIONER

LANCE M. HICKMAN
COMMISSIONER

P.O. BOX 66

MIDDLEBOURNE, WEST VIRGINIA 26149

NEIL A. ARCHER II
COUNTY CLERK

TELEPHONE
(304) 758-2102

FACSIMILE
(304) 758-2126

FILED

FEB -9 2022

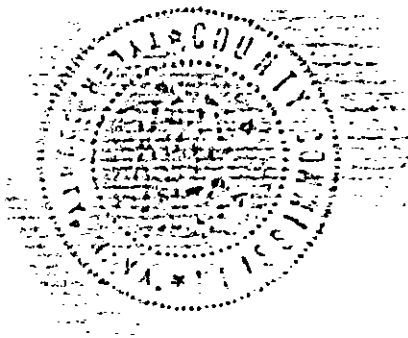
Candy L. Warner
Tyler Co. Circuit Clerk

STATE OF WEST VIRGINIA;

COUNTY OF TYLER:

I, Neil A. Archer II, Clerk of the Tyler County Commission do hereby certify that the foregoing writing is a true and accurate copy as appears on record in my office regarding the County Commission of Tyler County, West Virginia sitting as a Board of Assessment Appeals in the matter of Antero Resources Corporation.

Given under my hand and seal this 9th day of February, 2022.



Clerk, Tyler County Commission

February 19, 2021

VIA FACSIMILE/CERTIFIED MAIL TO FOLLOW

Neil A. Archer II
Tyler County Clerk
P.O. Box 66
Middlebourne, WV 26149

Re: Antero Resources Corporation
Notice of Protest and Election to have matter
heard by the Board of Assessment Appeals

Dear Mr. Archer:

In accordance with W.Va. Code §§ 11-3-23a, 11-3-24 and 11-3-24b, Antero Resources Corporation hereby protests the assessment of its property identified on the attached spreadsheet.

Generally stated, the primary reason for Antero Resources Corporation filing of this notice of protest is that the assessments of the properties at issue do not reflect the true and actual value of the properties.

Antero Resources Corporation reserves the right to raise additional grounds during the appeal process, including, but not limited to, the following: (1) the assessment of the properties at issue are not based on the fair market value of the properties; (2) the State's *ad valorem* tax regime disallowing deductions for actual expenses benefits in-state natural gas sellers at the expense of out-of-state natural gas sellers and thus violates dormant Commerce Clause principles; (3) the State's *ad valorem* tax regime disallowing deductions for actual expenses overvalues, for tax purposes, the wells of out-of-state sellers while undervaluing the comparable wells of in-state sellers and thus violates state and federal equal protection principles; and (4) the State's refusal to apply to pending tax disputes, and purported October 2020 Withdrawal of, its June 2020 Guidance allowing these deductions constitutes arbitrary and capricious agency decision-making that violates the State Administrative Procedures Act and state and federal due process principles. Please note that with respect to each property identified on the attached spreadsheet, the State Appraised Value, the Taxpayer's Value and the Value the Taxpayer Believes to be in Controversy are all indicated.

February 19, 2021
Page 2

Mr. Archer

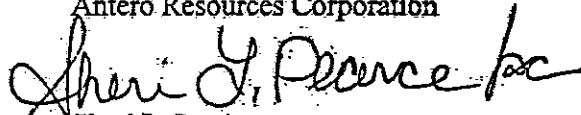
Furthermore, please be advised that Antero Resources Corporation elects to have this matter heard in October of 2021 when the County Commission sits as the Board of Assessment Appeals.

Antero Resources Corporation acknowledges that it will timely pay first and second half installment payments of taxes levied for the current tax year on or before the due date, unless it seeks and obtains a final order from a court of competent jurisdiction that would enjoin such payment requirements during the pendency of this protest. Any reduction in assessed value that is administratively or judicially determined in a decision that becomes final will result in a credit being established against taxes that become due for a subsequent tax year(s), except as otherwise stated in the decision or as provided in Chapter 11, Article 3 of the West Virginia Code.

A copy of this letter is also being provided to the County Assessor and State Tax Commissioner.

Best regards,

Antero Resources Corporation

A handwritten signature in black ink, appearing to read "Sheri L. Pearce" followed by a stylized flourish or initials.

Sheri L. Pearce

Chief Accounting Officer & VP Accounting

cc: Lisa Jackson
Matt Irby
Leroy Barker
Kirsten Evans

Antero Resources Corporation
 Tax Year 7/1/20-6/30/21
 Tyler County, WV

CY	Account #	# of Wells	API #	API # for Second Well (if applicable)	Property Description	State Appraised Value	Taxpayer Value	Value the Taxpayer Believes to be in Controversy
48	100050004	1	4709501303		Cain Heirs 6 (11315.1)	570	500	70
48	120162064	1	4709502064		Graff Unit 1H (10466.1)	1,960,892	837,203	1,123,689
48	120172200	1	4709502200		Ingot Unit 1H (11338.1)	3,349,046	1,829,299	1,519,747
48	120172201	1	4709502201		Ingot Unit 2H (11339.1)	3,083,952	1,632,267	1,451,685
48	120172202	1	4709502202		Wall Unit 1H (11340.1)	2,621,231	1,342,676	1,278,555
48	120172203	1	4709502203		Wall Unit 2H (11341.1)	2,576,616	1,314,600	1,262,016
48	120172273	1	4709502273		Rymer Unit 4HD (11477.1)	3,446,534	2,244,120	1,202,414
48	120182254	1	4709502254		Hare Unit 1H (11500.1)	9,862,262	5,973,418	3,888,844
48	120182276	1	4709502276		Lucy Unit 1H (11468.1)	10,053,908	6,055,930	3,997,978
48	120182277	1	4709502277		Lucy Unit 2H (11469.1)	10,220,094	6,362,852	3,857,242
48	120182293	1	4709502293		Hare Unit 2H (11501.1)	9,909,566	5,984,373	3,925,193
48	120182294	1	4709502294		Matthews Unit 2H (11502.1)	11,357,311	6,853,735	4,503,576
48	120182304	1	4709502304		Matthews Unit 1H (11525.1)	9,380,735	5,621,192	3,759,543
48	120182335	1	4709502335		Jufubee Unit 1H (11560.1)	11,003,701	6,703,322	4,300,379
48	120182336	1	4709502336		Jufubee Unit 2H (11561.1)	11,728,833	7,123,355	4,605,478
48	120182337	1	4709502337		Melvin Unit 1H (11555.1)	8,562,700	5,188,821	3,373,879
48	120182338	1	4709502338		Melvin Unit 2H (11556.1)	10,675,506	5,514,211	4,161,295
48	120192171	1	4709502171		JUG UNIT 2H (10615.1)	3,679,052	1,626,079	2,052,973
48	120192265	1	4709502265		JUG UNIT 1H (11567.1)	3,702,001	1,634,714	2,067,287
48	120192269	1	4709502269		RYMER UNIT 1HST (11576.1)	4,361,223	1,956,139	2,405,084
48	120192270	1	4709502270		RYMER UNIT 2H (11577.1)	3,381,474	1,442,138	1,939,336
48	120192275	1	4709502275		RYMER UNIT 3H (11578.1)	3,795,395	1,702,985	2,092,410
48	120192282	1	4709502282		LEASEBURG UNIT 1H (11750.1)	4,474,543	2,025,322	2,449,221
48	120192284	1	4709502284		SECKMAN UNIT 1H (11752.1)	4,699,863	2,167,490	2,532,373
48	120192285	1	4709502285		SECKMAN UNIT 2HST (11753.1)	5,313,641	2,507,624	2,806,017
48	120192286	1	4709502286		SECKMAN UNIT 3H (11754.1)	5,228,352	2,302,345	2,926,007
48	120192306	1	4709502306		JOHNSTON UNIT 2H (11573.1)	4,033,266	1,816,208	2,217,058
48	120192307	1	4709502307		JOHNSTON UNIT 1H (11572.1)	8,686,406	4,232,786	4,453,620
48	120192308	1	4709502308		JOHNSTON UNIT 3H (11574.1)	4,301,165	1,940,789	2,360,376
48	120192361	1	4709502361		DEULLEY UNIT 3H (10713.1)	6,414,808	3,118,762	3,296,046
48	120192362	1	4709502362		BEAD UNIT 2H (11756.1)	7,434,156	3,558,288	3,875,868
48	120202283	1	4709502283		LEASEBURG UNIT 2H (11751.1)	4,670,648	2,146,214	2,524,434
48	120202356	1	4709502356		EMERGER UNIT 4H (11617.1)	8,617,820	4,393,700	4,224,120
48	120202359	1	4709502359		DEULLEY UNIT 1H (10711.1)	6,470,333	3,051,643	3,418,690
48	120202360	1	4709502360		DEULLEY UNIT 2H (10712.1)	7,087,117	3,365,607	3,721,510
48	120202364	1	4709502364		BOUNTY UNIT 3H (12133.1)	9,390,809	4,683,842	4,706,967
48	120202370	1	4709502370		BEAD UNIT 1H (11755.1)	8,370,624	4,068,211	4,302,413
48	120202376	1	4709502376		EMERGER UNIT 1H (11614.1)	9,800,267	5,199,790	4,600,477
48	120202378	1	4709502378		EMERGER UNIT 2H (11615.1)	8,532,145	4,449,380	4,082,765
48	120202379	1	4709502379		EMERGER UNIT 3H (11616.1)	9,613,999	5,064,112	4,549,887
48	120202380	1	4709502380		SAN JUAN UNIT 1H (12462.1)	7,240,862	3,729,296	3,511,566
48	120202381	1	4709502381		SAN JUAN UNIT 2H (11618.1)	7,484,432	4,007,999	3,476,433
48	120202382	1	4709502382		SAN JUAN UNIT 3H (11619.1)	7,728,916	4,030,407	3,698,509
48	120202383	1	4709502383		SAN JUAN UNIT 4H (11620.1)	6,963,898	3,420,041	3,543,857
48	120202394	1	4709502394		MYSIS UNIT 1H (12456.1)	5,035,204	2,398,499	2,636,705
48	120202395	1	4709502395		MYSIS UNIT 2H (12457.1)	5,989,133	3,171,022	2,818,111
48	120202396	1	4709502396		MYSIS UNIT 3H (12458.1)	6,205,698	3,254,794	2,950,904
48	120202400	1	4709502400		ANT UNIT 1H (12453.1)	9,817,819	5,308,008	4,509,811
48	120202401	1	4709502401		ANT UNIT 2H (12454.1)	8,701,467	4,537,115	4,164,352
48	120202402	1	4709502402		ANT UNIT 3H (12455.1)	8,508,979	4,442,072	4,066,907
48	120202411	1	4709502411		BOUNTY UNIT 1H (12131.1)	8,582,790	4,326,368	4,256,422
48	120202412	1	4709502412		BOUNTY UNIT 2H (12132.1)	9,845,891	4,973,989	4,871,902
48	120202413	1	4709502413		PIERSON UNIT 1H (12134.1)	8,008,170	4,123,899	3,884,271
48	120202414	1	4709502414		PIERSON UNIT 2H (12135.1)	9,313,923	4,770,760	4,543,163
48	120202415	1	4709502415		PIERSON UNIT 3H (12136.1)	9,331,426	4,751,812	4,579,614

Antero Resources Corporation
 Tax Year 7/1/20-6/30/21
 Tyler County, WV

CY	Account #	# of Wells	API #	API # for Second Well (if applicable)	Property Description	State Appraised Value	Taxpayer Value	Value the Taxpayer Believes to be in Controversy
48	120202416	1	4709502416		PIERSON UNIT 4H (12137.1)	9,011,284	4,578,163	4,433,121
48	120202439	1	4709502439		MIDGE UNIT 3H (12558.1)	12,576,831	7,061,931	5,514,840
48	120202449	1	4709502449		MIDGE UNIT 2H (12557.1)	12,557,105	6,887,734	5,669,371
48	120202451	1	4709502451		OLIVE UNIT 2H (12561.1)	13,424,404	7,827,700	5,596,704
48	120202452	1	4709502452		OLIVE UNIT 3H (12562.1)	12,650,023	7,046,534	5,603,429
48	120212357	1	4709502357		AR TAUSCHER UNIT 1H	4,682,721	2,453,194	2,229,527
48	120212404	1	4709502404		AR COPPER JOHN UNIT 1H	5,936,369	3,002,621	2,933,748
48	120212405	1	4709502405		AR COPPER JOHN UNIT 2H	5,702,262	2,919,384	2,782,878
48	120212406	1	4709502406		AR COPPER JOHN UNIT 3H	5,832,581	2,927,134	2,905,447
48	120212407	1	4709502407		AR TAUSCHER UNIT 2H	5,213,662	2,774,256	2,439,406
48	120212427	1	4709502427		AR SPOCK UNIT 2H	5,664,300	2,042,066	3,622,234
48	120212428	1	4709502428		AR SPOCK UNIT 3H	5,998,253	2,178,069	3,820,184
48	120212429	1	4709502429		AR PARACHUTE UNIT 1H	8,333,322	4,677,430	3,655,892
48	120212430	1	4709502430		AR PARACHUTE UNIT 2H	8,767,977	4,895,435	3,872,542
48	120212433	1	4709502433		AR PARACHUTE UNIT 3H	6,773,150	3,773,813	3,035,337
48	120212434	1	4709502434		AR PHEASANT UNIT 1H ST	9,436,863	5,290,672	4,146,191
48	120212435	1	4709502435		AR PHEASANT UNIT 2H	9,020,584	5,049,613	3,970,971
48	120212437	1	4709502437		AR PHEASANT UNIT 3H	6,708,804	3,779,097	2,929,707
48	120212456	1	4709502456		AR TAUSCHER UNIT 3H	6,273,506	3,191,253	3,082,253
48	120212474	1	4709502474		AR BEEM UNIT 3H	7,384,271	2,799,389	4,584,882
48	120212478	1	4709502478		AR SPOCK UNIT 1H	6,327,083	2,309,570	4,017,513
48	120212517	1	4709502517		AR HORST UNIT 2H	6,920,668	2,151,852	4,768,816
48	120212518	1	4709502518		AR SARAHLENE UNIT 1H	6,794,584	2,171,440	4,623,144
48	120212519	1	4709502519		AR SARAHLENE UNIT 2H	6,454,722	1,956,308	4,498,414
48	120212520	1	4709502520		AR STERLING UNIT 1H	6,886,941	2,230,358	4,656,583
48	120212526	1	4709502526		AR HEINTZMAN UNIT 1H	8,203,772	3,169,505	5,034,267
48	120212527	1	4709502527		AR HEINTZMAN UNIT 2H	7,936,790	3,072,673	4,864,117
48	120212528	1	4709502528		AR HEINTZMAN UNIT 3H	7,258,825	2,777,317	4,481,508
48	120212529	1	4709502529		AR STERLING UNIT 2H	7,101,315	2,299,092	4,802,223
48	120212530	1	4709502530		AR STERLING UNIT 3H	5,727,030	1,501,901	4,225,129
48	120212531	1	4709502531		AR HORST UNIT 3H	6,775,260	2,082,473	4,692,787
48	220162126	1	4709502126		Weigle Unit 1H (10936.1)	3,903,072	2,048,852	1,854,210
48	220172215	1	4709502215		Weigle Unit 2H (10688.1)	4,072,319	2,125,662	1,946,657
48	220182169	1	4709502169		Scardina Unit 1H (10565.1)	6,906,488	3,966,707	2,939,781
48	220182172	1	4709502172		Scardina Unit 2H (11342.1)	5,976,203	3,292,613	2,683,590
48	220182173	1	4709502173		Scardina Unit 3H (11343.1)	5,469,619	2,988,627	2,480,992
48	220182174	1	4709502174		Scardina Unit 4H (11344.1)	7,627,945	4,307,833	3,320,052
48	220182181	1	4709502181		Hawkeye Unit 1H (10617.1)	6,900,847	3,945,924	2,954,923
48	220182182	1	4709502182		Hawkeye Unit 2H (10618.1)	7,562,511	4,335,909	3,226,602
48	220182183	1	4709502183		Hawkeye Unit 3H (10619.1)	6,844,480	3,946,713	2,897,767
48	220182327	1	4709502327		Klondike Unit 1H (11535.1)	11,566,618	6,893,884	4,672,734
48	220182328	1	4709502328		Klondike Unit 2H (11536.1)	8,694,127	5,062,778	3,631,349
48	220202324	1	4709502324		GOODFELLOW UNIT 1H (11591)	10,725,151	5,669,715	5,055,436
48	220202325	1	4709502325		GOODFELLOW UNIT 2H (11592)	8,458,491	4,375,769	4,082,722
48	220202326	1	4709502326		OWENS UNIT 3H (11590.1)	12,001,599	6,412,583	5,589,011
48	220202346	1	4709502346		DEAN UNIT 1H (11593.1)	6,964,745	3,501,774	3,462,971
48	220202347	1	4709502347		DEAN UNIT 2H (11594.1)	9,285,994	4,804,570	4,481,424
48	220202366	1	4709502366		OWENS UNIT 1H (11588.1)	9,370,666	4,970,241	4,400,425
48	220202367	1	4709502367		OWENS UNIT 2H (11589.1)	9,566,628	5,078,679	4,487,949
48	220212523	1	4709502523		AR ABU UNIT 4H	18,153,890	11,371,975	6,781,915
48	418181928	1	4709501928		SHREVE'S 703 (11481.1)	20,245	6,593	13,652
48	418181929	1	4709501929		BOWEN 704 (11480.1)	16,089	12,338	3,751
48	510000994	1	4709500994		Hadley 1 (WK 58) (11322)	1,216	500	716
48	518181906	1	4709501906		Hadley 3 (11321.1)	23,165	1,580	21,585
48	520142038	2	4709502038	4709502039	Ed Arnold Unit 1H and Ed	2,016,822	701,358	1,315,464

Antero Resources Corporation
 Tax Year 7/1/20-6/30/21
 Tyler County, WV

CY	Account #	# of Wells	API #	API # for Second Well (if applicable)	Property Description	State Appraised Value	Taxpayer Value	Value the Taxpayer Believes to be in Controversy
48	520152067	1	4709502067		Sweeney Unit 2H (10274.1)	1,183,515	446,535	736,979
48	520152068	1	4709502068		Sweeney Unit 1H (10273.1)	1,450,084	568,759	881,325
48	520152078	1	4709502078		Thorkildson Unit 1H (1028)	1,246,292	469,879	776,413
48	520152079	1	4709502079		Thorkildson Unit 2H (1028)	1,325,668	502,169	823,499
48	520172156	1	4709502156		Silas Unit 2H (10514.1)	2,815,922	1,298,504	1,517,418
48	520172157	1	4709502157		Silas Unit 1H (10515.1)	3,709,272	1,802,979	1,906,293
48	520172158	1	4709502158		Glover Unit 1H (10513.1)	2,764,301	1,256,746	1,507,555
48	520172159	1	4709502159		Glover Unit 2H (10512.1)	2,795,895	1,264,056	1,531,839
48	520182179	1	4709502179		Owo Unit 1H (10584.1)	4,649,729	2,465,854	2,183,875
48	520182180	1	4709502180		Owo Unit 2H (11352.1)	5,128,299	2,762,106	2,366,193
48	520182187	1	4709502187		James Gray Unit 1H (11353)	2,310,632	1,044,866	1,265,766
48	520182188	1	4709502188		Berry Unit 1H (11348.1)	5,189,930	2,712,257	2,477,673
48	520182189	1	4709502189		Berry Unit 2H (11350.1)	6,211,976	3,275,108	2,936,868
48	520192162	1	4709502162		BANNER UNIT 1H (10506.1)	5,453,873	2,375,699	3,078,174
48	520192163	1	4709502163		BANNER UNIT 2H (10507.1)	6,182,147	2,722,954	3,459,193
48	520192164	1	4709502164		TABOR UNIT 1H (10508.1)	5,680,207	2,487,085	3,193,122
48	520192165	1	4709502165		TABOR UNIT 2H (10509.1)	6,397,074	2,821,810	3,575,264
48	520192166	1	4709502166		PRUDENCE UNIT 1H (11345.1)	6,503,327	2,892,197	3,611,130
48	520192167	1	4709502167		PRUDENCE UNIT 2H (11346.1)	9,529,177	4,412,263	5,116,914
48	520212503	1	4709502503		AR BRADEN UNIT 3H	8,225,776	2,026,875	6,198,901
48	520212545	1	4709502545		AR BRADEN UNIT 1H	7,588,968	1,906,235	5,682,733
48	520212546	1	4709502546		AR BRADEN UNIT 2H	7,689,311	1,952,986	5,736,325
48	520212547	1	4709502547		AR LINDSEY UNIT 1H	8,157,468	2,100,766	6,056,702
48	520212548	1	4709502548		AR LINDSEY UNIT 2H	7,455,662	1,942,684	5,512,978
48	620152031	1	4709502031		Kirk Hadley TYL 8 PH (1	565,914	251,376	314,538
48	620162127	1	4709502127		Freeland Unit 2H (10587.1)	1,550,906	668,603	882,303
48	620192185	1	4709502185		FREELAND UNIT 1H (10586.1)	1,976,816	850,176	1,126,640
48	620192222	1	4709502222		WOODWORTH UNIT 1H (10714.1)	1,930,204	809,591	1,120,613
48	620192246	1	4709502246		PLUM RUN UNIT 1H (11470.1)	3,285,554	1,602,423	1,683,131
48	620192247	1	4709502247		PLUM RUN UNIT 2H (11471.1)	3,850,112	1,910,921	1,939,191
48	620192248	1	4709502248		PLUM RUN UNIT 3H (11473.1)	2,762,369	1,286,396	1,475,973
48	620192249	1	4709502249		WOODWORTH UNIT 2H (10715.1)	2,214,375	964,853	1,249,522
48	620192250	1	4709502250		WOODWORTH UNIT 3H (11451.1)	1,749,651	706,050	1,043,601
48	620202287	1	4709502287		TINKER UNIT 2H (11586.1)	4,002,993	2,122,792	1,880,201
48	620202295	1	4709502295		TINKER UNIT 3H (11587.1)	3,220,155	1,679,265	1,540,890
48	620202320	1	4709502320		TAMARINO UNIT 2H (11874.1)	3,985,244	2,002,416	1,982,828
48	620202348	1	4709502348		EDWARDS UNIT 2H (11595.1)	2,588,255	1,315,549	1,272,706
48	620202349	1	4709502349		EDWARDS UNIT 3H (11581.1)	2,677,933	1,366,883	1,311,050
48	620202350	1	4709502350		MARKLE UNIT 2H (11584.1)	5,076,350	2,642,619	2,433,731
48	620202352	1	4709502352		DILLON UNIT 2H (11582.1)	6,601,245	3,530,498	3,070,747
48	620202353	1	4709502353		DILLON UNIT 3H (11583.1)	5,632,726	2,975,147	2,657,579
48	620202354	1	4709502354		MARKLE UNIT 3H (11585.1)	4,344,227	2,225,714	2,118,513
48	620202369	1	4709502369		ALLI UNIT 2H (12524.1)	13,755,099	8,298,256	5,456,843
48	620202372	1	4709502372		MARKLE UNIT 1H (11606.1)	5,161,320	2,695,028	2,466,292
48	620202373	1	4709502373		DILLON UNIT 1H (11605.1)	5,189,072	2,683,132	2,505,940
48	620202374	1	4709502374		EDWARDS UNIT 1H (11607.1)	7,214,918	4,072,727	3,142,191
48	620202375	1	4709502375		TINKER UNIT 1H (11608.1)	4,964,150	2,663,577	2,300,573
48	620202385	1	4709502385		SHEPHERD UNIT 1H (11867.1)	8,481,439	4,705,711	3,775,728
48	620202386	1	4709502386		SHEPHERD UNIT 2H (11868.1)	10,550,496	5,993,386	4,557,110
48	620202388	1	4709502388		HOPPER UNIT 1H (11870.1)	3,710,718	1,850,858	1,859,860
48	620202389	1	4709502389		HOPPER UNIT 2H (11871.1)	4,472,555	2,396,833	2,075,722
48	620202390	1	4709502390		HOPPER UNIT 3H (11872.1)	4,199,292	2,121,567	2,077,725
48	620202391	1	4709502391		PACKERS UNIT 2H (11865.1)	7,532,276	4,120,097	3,412,179
48	620202392	1	4709502392		PACKERS UNIT 3H (11866.1)	7,244,548	3,908,208	3,336,340
48	620202397	1	4709502397		PACKERS UNIT 1H (11864.1)	7,492,161	4,080,420	3,411,741

Antero Resources Corporation
 Tax Year 7/1/20-6/30/21
 Tyler County, WV

CY	Account #	# of Wells	API #	API # for Second Well (if applicable)	Property Description	State Appraised Value	Taxpayer Value	Value the Taxpayer Believes to be in Controversy
48	620202398	1	4709502398		TAMARIND UNIT 1H (11873.1)	4,291,458	2,303,348	1,988,110
48	620202399	1	4709502399		TAMARIND UNIT 3H (11875.1)	4,031,577	2,082,999	1,948,578
48	620202418	1	4709502418		MCKIM UNIT 1H (12517.1)	14,403,700	8,908,105	5,495,595
48	620202419	1	4709502419		MCKIM UNIT 2H (12518.1)	13,602,419	8,460,818	5,141,601
48	620202420	1	4709502420		MCKIM UNIT 3H (12519.1)	14,895,911	9,484,927	5,410,984
48	620202421	1	4709502421		ALLI UNIT 1H (12522.1)	14,538,270	8,703,017	5,835,253
48	620202422	1	4709502422		ALLI UNIT 3H (12525.1)	13,586,626	8,234,814	5,351,812
48	620202423	1	4709502423		HAGA UNIT 1H (12520.1)	14,713,919	9,007,530	5,706,389
48	620202424	1	4709502424		HAGA UNIT 2H (12521.1)	15,304,457	9,328,186	5,976,271
48	620202425	1	4709502425		HAGA UNIT 3H (12523.1)	13,215,961	8,059,135	5,156,826
48	620202479	1	4709502479		ROBERT LEE UNIT 2H (13000)	5,880,788	3,385,946	2,494,842
48	620202480	1	4709502480		HOUSER UNIT 1H (11679.1)	15,666,213	11,106,264	4,559,949
48	620212408	1	4709502408		AR JIM UNIT 1H	7,123,639	2,927,021	4,196,618
48	620212410	1	4709502410		AR JIM UNIT 3H	8,302,132	3,791,927	4,510,205
48	620212444	1	4709502444		AR CARSE UNIT 2H	6,583,991	1,665,074	4,918,917
48	620212453	1	4709502453		AR CROWN UNIT 1H	7,678,450	3,287,856	4,390,594
48	620212455	1	4709502455		AR CROWN UNIT 3H	7,084,634	3,046,198	4,038,436
48	620212461	1	4709502461		AR JACK UNIT 1H	10,047,000	4,846,679	5,200,321
48	620212463	1	4709502463		AR JACK UNIT 3H	9,543,660	4,665,281	4,878,379
48	620212469	1	4709502469		AR JAMESON UNIT 1HST	11,921,305	5,995,036	5,926,269
48	620212471	1	4709502471		AR JAMESON UNIT 3H	10,636,621	5,423,251	5,213,370
48	620212515	1	4709502515		AR WINCHESTER UNIT 1HST	7,002,978	2,375,326	4,627,652
48	620212532	1	4709502532		AR ORVIS UNIT 2H	7,388,248	2,542,445	4,845,803
48	620212533	1	4709502533		AR REMINGTON UNIT 1H	6,892,589	2,341,917	4,550,672
48	620212534	1	4709502534		AR WINCHESTER UNIT 2H	6,747,338	2,266,196	4,481,142
48	620212535	1	4709502535		AR REMINGTON UNIT 2H	7,122,136	2,454,528	4,667,608
48	620212536	1	4709502536		AR CARSE UNIT 1H	5,893,164	1,469,959	4,423,205
48	620212538	1	4709502538		AR GAUGE UNIT 1H	7,689,995	2,091,394	5,598,601
48	620212539	1	4709502539		AR GAUGE UNIT 2H	8,070,805	2,050,813	6,019,992
48	620212540	1	4709502540		AR GAUGE UNIT 3H	7,866,710	2,026,604	5,840,106
48	620212558	1	4709502558		AR ROBERT LEE UNIT 1H	9,630,381	2,756,750	6,873,631
48	620212559	1	4709502559		AR WINEBRENNER UNIT 1H	11,725,163	3,858,617	7,866,546
48	620212560	1	4709502560		AR FORREST FENN UNIT 1H	8,308,768	2,318,790	5,989,978
48	620212590	1	4709502590		AR GROUNDS UNIT 1H	7,326,207	1,990,441	5,335,766
48	620212591	1	4709502591		AR GROUNDS UNIT 2H	6,369,355	1,709,400	4,659,955
48	620212592	1	4709502592		AR GROUNDS UNIT 3H	5,957,015	1,576,635	4,380,380
48	620212593	1	4709502593		AR WICK UNIT 1H	7,841,496	2,302,938	5,538,558
48	620212594	1	4709502594		AR WICK UNIT 2H	8,243,313	2,281,795	5,961,518
48	620212595	1	4709502595		AR WICK UNIT 3H	6,758,919	1,885,572	4,873,347
						1,408,590,253	692,973,452	715,616,801



Tyler County Commission

P.O. BOX 66

MIDDLEBOURNE, WEST VIRGINIA 26149

ERIC H. VINCENT
COMMISSIONER

MICHAEL V. SMITH
COMMISSIONER

LANCE M. HICKMAN
COMMISSIONER

NEIL A. ARCHER II
COUNTY CLERK

TELEPHONE
(304) 758-2102

FACSIMILE
(304) 758-2126

STATE OF WEST VIRGINIA;

COUNTY OF TYLER:

I, Neil A. Archer II, Clerk of the Tyler County Commission do hereby certify that the foregoing writing is a true and accurate copy as appears on record in my office regarding the County Commission of Tyler County, West Virginia sitting as a Board of Assessment Appeals in the matter of Antero Resources Corporation.

Given under my hand and seal this 9th day of February, 2022.




Clerk, Tyler County Commission



**STEPTOE &
JOHNSON**
FLLC
ATTORNEYS AT LAW

Chase Tower, 17th Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.stepto-johnson.com

Writer's Contact Information
(304) 353-8154
John.meadows@stepto-johnson.com

October 5, 2021

VIA FACSIMILE AND CERTIFIED MAIL

Tyler County Commission
P.O. Box 66
Middlebourne, WV 26149
Fax: (304) 758-2126

Neil A. Archer, II
Tyler County Clerk
P.O. Box 66
Middlebourne, WV 26149
Fax: (304) 758-2126

**Re: Antero Resources Corporation's Tax Year 2021 Notice of Protest and
Election to Have Matter Heard by the Board of Assessment Appeals**

Dear Mr. Archer and-Tyler County Commission:

Enclosed is an original Motion for Admission-Pro Hac Vice regarding the above-captioned matter. Please mark the document "filed" and place it in the appropriate file.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

John J. Meadows

John J. Meadows

JJM/sec
Enclosure

**IN THE COUNTY COMMISSION OF TYLER COUNTY, WEST VIRGINIA
SITTING AS THE BOARD OF ASSESSMENTS APPEALS**

**RE: ANTERO RESOURCES CORPORATION'S TAX
YEAR 2021 NOTICE OF PROTEST AND ELECTION TO
HAVE MATTER HEARD BY THE BOARD OF
ASSESSMENT APPEALS**

MOTION FOR ADMISSION PRO HAC VICE

COMES NOW the Petitioner, Antero Resources Corporation, by counsel, John J. Meadows and the law-firm of Steptoe & Johnson PLLC, a member in good standing of the West Virginia State Bar, as the responsible local attorney under Rule 8.0 of the Rules for Admission to the Practice of Law, and respectfully petitions this Commission for leave to allow attorney and applicant, Lawrence D. Rosenberg, to appear and participate in this matter as counsel for the Petitioner on a pro hac vice basis.

In support of this Motion, a Verified Application for Pro-Hac Vice Admission is attached as Exhibit 1 and incorporated herein by reference.

The Verified Application reflects that Mr. Rosenberg is admitted to the District of Columbia Bar and the Pennsylvania State Bar, where he is a member in good standing. Further, Mr. Rosenberg agrees to comply with all law, rules, and regulations of West Virginia state and local governments in compliance with Rule 8.0 of the Rules for Admission and Practice of Law.

A copy of this Application and the required fee of three hundred fifty dollars (\$350.00) have also been filed with the West Virginia State Bar with Petitioner's Motion for Admission Pro Hac Vice of Lawrence D. Rosenberg in this proceeding.

ANTERO RESOURCES CORPORATION,
By counsel,

John J. Meadows (by JEM 13020)
John J. Meadows (WVSB No. 9942)

Steptoe & Johnson PLLC

P.O. Box 1588

Charleston, WV 25326-1588

Telephone: (304) 353-8000

Facsimile: (304) 353-8180

john.meadows@steptoe-johnson.com

IN THE COUNTY COMMISSION OF TYLER COUNTY, WEST VIRGINIA
SITTING AS THE BOARD OF ASSESSMENTS APPEALS

RE: ANTERO RESOURCES CORPORATION'S TAX
YEAR 2021 NOTICE OF PROTEST AND ELECTION TO
HAVE MATTER HEARD BY THE BOARD OF
ASSESSMENT APPEALS

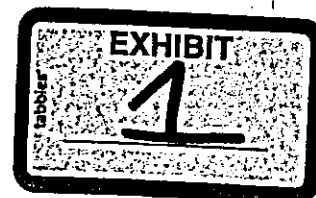
VERIFIED STATEMENT FOR ADMISSION PRO HAC VICE

STATE OF MARYLAND

COUNTY OF MONTGOMERY

I, Lawrence D. Rosenberg, being first duly sworn, state as follows:

1. This is my statement in support of my Application for Admission Pro Hac Vice as counsel for Petitioner Antero Resources Corporation ("Antero") in the above-captioned matter.
2. I am an attorney with the law firm of Jones Day with offices located at 51 Louisiana Avenue, NW, Washington, D.C., 20001.
3. I have been admitted to practice law by the following bars:
 - a. Pennsylvania State Bar, ID No. 67414 (Good Standing)
 - b. District of Columbia Bar, ID No. 462091 (Good Standing)
4. The Pennsylvania State Bar and the District of Columbia Bar extend like courtesy or privilege to members of the West Virginia State Bar as is being sought in this Application.
5. Within the preceding twenty-four (24) months, I have been involved in the following matters before West Virginia Tribunals or bodies:
 - a. United States District Court, Northern District of West Virginia
 - i. *Wilkerson v. United States*, Civil Action No. 1:18-cv-00211
 - b. Supreme Court of the United States
 - i. *Dawson v. Steager*, 139 S. Ct. 698 (2019)



c. West Virginia Supreme Court

- i. *Antero Resources v. Irby*, No. 20-0530
- ii. *Antero Resources v. Irby*, No. 20-0531
- iii. *Antero Resources v. Irby*, No. 20-0579
- iv. *Antero Resources v. Irby*, No. 21-0119
- v. *Antero Resources v. Irby*, No. 21-0121
- vi. *Antero Resources v. Irby*, No. 21-0620

d. West Virginia Business Court

- i. *Antero Resources v. Irby*, Civil Action No. 17-AA-1 (Doddridge)
- ii. *Antero Resources v. Irby*, Civil Action No. 17-AA-3 (Doddridge)
- iii. *Antero Resources v. Irby*, Civil Action No. 18-AA-1 (Doddridge)
- iv. *Antero Resources v. Irby*, Civil Action No. 19-AA-1 (Doddridge)
- v. *Antero Resources v. Irby*, Civil Action No. 18-AA-1 (Ritchie)
- vi. *Antero Resources v. Irby*, Civil Action No. 18-AA-1 (Tyler)
- vii. *Antero Resources v. Irby*, Civil Action No. 18-P-235-3 (Harrison)
- viii. *Antero Resources v. Irby*, Civil Action No. 20-P-83-2 (Harrison)

6. Please see Exhibit A for all matters before West Virginia tribunals or judicial bodies in which any attorneys of the firm of Jones Day have been involved.

7. I am a member in good standing with the Pennsylvania State Bar and District of Columbia Bar and have not been disciplined by either body in the 24-month period preceding this application.

8. If admitted pro hac vice in this proceeding, I will comply with all laws, rules, and regulations of West Virginia federal, state, and local governments, where applicable, including

taxing authorities as well as complying with the requirements of the West Virginia Rules of Professional Conduct and the Court's rules of decorum.

9. The attorney registration agency and disciplinary agency for the District of Columbia-Bar is: Office of Disciplinary Counsel, 515 Fifth Street, N.W., Building A, Suite 117, Washington, D.C. 20001; Phone: 202-638-1501.

10. The attorney registration agency and the disciplinary agency for the Pennsylvania State Bar is: The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, P.O. Box 62625, Harrisburg, Pennsylvania 17106; Phone: 717-231-3380.

11. John J. Meadows of the law firm of Steptoe & Johnson PLLC, 707 Virginia Street, East, Seventeenth Floor, Chase Tower, Charleston, WV 25326 is a member in good standing of the West Virginia State Bar and has agreed to serve as the responsible local attorney regarding the above-styled matter.

12. I will submit the required \$350 registration fee for out-of-state lawyers to the West Virginia State Bar for the above-styled matter.

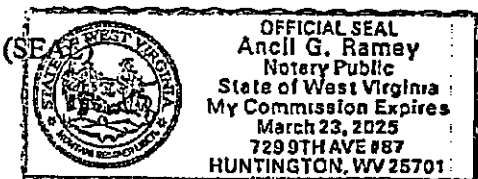
I declare under penalty of perjury that the foregoing is true and correct.

Dated this 1st day of October, 2021.

Lawrence D. Rosenberg
Lawrence D. Rosenberg

Taken, subscribed, and sworn to before the undersigned authority this 1st day of October, 2021.

My commission expires: 3.23.25



[Signature]
NOTARY PUBLIC

Court	Case No.	Case Name
S.D.W.Va	3:17-cv-03731	U.S. Equal Employment Opportunity Commision v. CSX Transportation, Inc.
S.D.W.Va	18-1397	Warren, Jeffrey V. Branch Banking And Trust Company; Equifax Inform...
ND.W.VA	5:19-cv-00007	Creighton, Bryant K. And Beth Ann Creighton V. Trans Union, LLC; Experian Solutions Inc. et al
13-Circuit Court	18-C-1136	Jason Barneette v. Experian
30-Circuit Court	16-c-34	Connie R. Hundley, Plaintiff v. AirMedCare Network
S.D.W.Va	14-11011	Good, Lori, et al. v Etowah Terminal, L.L.C., Chemstream Holdings, Inc.
N.D.W.Va	19-220	McMorrow, Lisa v. Experian Information Solutions, Inc. et al
S.D.W.Va	19-108	Minix v. Experian Information Solutions, Inc., et al.
N.D.W.Va	20-125	Beasley, Bethany v. Verizon Wireless Services, LLC., et al
S.D.W.Va	19-236	Blankenship v. Hon. Andrew Napolitano (Ret.), et al.
13-Circuit Court	14-C-192	Good, Lori, as next friend for her minor child, Jessica Good, et al. v Etowah River Terminal, LLC; Chemstream Holdings, Inc., et. al.
S.D.W.Va	14-1374	Good, et al. v. American Water Works Company, Inc.
N.D.W.Va	20-cv-00102-JPB	Weirton Area Water Board and City of Weirton v. 3M Company, Daikin
S.D.W.Va	2:20-cv-00769	Carney, Anitra v Experian Information Solutions, Inc. et al
13-Circuit Court	18-C-1537	Alexander Righter Conner, Executor of the Estate of Crystal Faye Cash v. Laboratory Corporation of American Holdings
02-Circuit Court	17-C-248	Brooke City Commission et al v Purdue Pharma L.P. et al



Court	Case No.	Case Name
02-Circuit Court	17-C-249	Brooke City Commission et al v Purdue Pharma L.P. et al
02-Circuit Court	17-C-250	Brooke City Commission et al v Purdue Pharma L.P. et al
02-Circuit Court	17-C-251	Brooke City Commission et al v Purdue Pharma L.P. et al
02-Circuit Court	17-C-252	Brooke City Commission et al v Purdue Pharma L.P. et al
02-Circuit Court	17-C-253	Brooke City Commission et al v Purdue Pharma L.P. et al
02-Circuit Court	17-C-254	Brooke City Commission et al v Purdue Pharma L.P. et al
02-Circuit Court	17-C-255	Brooke City Commission et al v Purdue Pharma L.P. et al
29-Circuit Court	CC-40-2020-C-83	State of West Virginia ex rel. Patrick Morrissey v. Walmart, Inc. f/k/a Wal-Mart
Putnam County Circuit Court, WV	CC-40-2020-C-132	State of West Virginia, et rel. Patrick Morrissey, Attorney General v. Walmart, Inc. f/k/a Wal-Mart Stores, Inc., a Delaware Corporation
03-Circuit Court	17-AA-1 & 17-AA-3	Antero Resources Corporation v. Dale E. Steager et al.
02-Circuit Court	20-c-79	The County Commission of Grant County v Cardinal Health Inc., et al.
02-Circuit Court	20-c-80	The County Commission of Mineral County v Cardinal Health Inc., et al.
02-Circuit Court	20-c-81	The County Commission of Monroe County v Cardinal Health Inc., et al.



Court	Case No.	Case Name
S.D.W.Va.	20-176	Corpuz-Wilson, Stacey v. Experian Information Solutions, Inc. et al
10-Circuit Court	20-6-112-1	Mccoey, Travis v. Experian Information Solutions, Inc. et al
ND:W.VA	20-cv-11111	Weirton Area Water Board and City of Weirton v 3M Company et al.
01-Circuit Court	20-C-55	City of Fairmont West Virginia v Allergan PLC et al
N.D.W.Va	20-cv-000061	Merck Sharp & Dohme B.V. Organon USA Inc. v. Mylan Pharmaceuticals et al.
USDC ND	1:20-cv-00061	Merck Sharp & Dohme B.V. Organon USA Inc. v. Mylan Pharmaceuticals et al.
02-Circuit Court	20-C-34	City of Beckley, West Virginia v Allergan PLC et al
02-Circuit Court	20-C-16	Mayor Elmer Ray Spence v. Cardinal Health et al
S.D.W.Va	16-05224	Air Evac EMS, Inc. v. Cheatham et al.
02-Circuit Court	19-C-259	City of Clarksburg, West Virginia v Allergan PLC et al.
02-Circuit Court	19-C-261	City of Richwood, West Virginia v Allergan PLC, et al.
02-Circuit Court	19-C-263	City of White Sulphur Springs, West Virginia v. Allergan PLC, et al.
N.D.W.Va	1:20-cv-00003	Celgene Corporation v Mylan Pharmaceuticals et al
S.D.W.Va	2:19-cv-00707	Stacy Harris, as Next Friend and Guardian of Baby N.M.B. v McKesson Corp et al.
02-Circuit Court	19-C-151	Mayor Peggy Knotts Barney v Purdue Pharma
02-Circuit Court	19-96 to 19-108	Roane County Commission
9-Circuit Court	19-69	West Virginia University Hospitals V Purdue Pharma
18-Circuit Court	19-C-36	Minix , Joshua J. Centrak Source, LLC; Experian Information Solutions
N.D.W.Va	19-40	City of Charles Town V. Amerisourcebergen drug corp.

Court	Case No.	Case Name
Supreme Court of Appeals	19-0066	WV Board of Pharmacy v. Brooke City, Commonwealth
02-Circuit Court	19-c-4	County Commission of Mason City v Purdue Pharma LP
02-Circuit Court	18-C-20	Pleasants County Commission et al v Mylan Pharmaceuticals. Inc., et al.
S.D.W.Va	2:18-cv-01472	The City of Kenova v. AmerisourceBergen
S.D.W.Va.	2:18-cv-01392	Town of Gauley Bridge v AmerisourceBergen
02-Circuit Court	18-C-222	Monogalia County Commission v Purdue Pharma
S.D.W.Va	3:17-cv-01362	The City of Huntington v. Amerisource Bergen Drug Corporation et al
S.D.W.Va	2:18-cv-00992	Cobb et al v Trans Union, LLC, Experian Information Solutions, et al.
N.D.W.Va	5:18-cv-00089	-Chanze v. Air EVAC EMS, Inc.
N.D.W.Va	5:18-cv-00010	Hancock County Commission v. Purdue Pharma L.P.
N.D.W.Va	5:18-cv-00011	Harrison County Commission v. Purdue Pharma L.P.
N.D.W.Va	5:18-cv-00012	Lewis County Commission v. Purdue Pharma L.P.
N.D.W.Va	5:18-cv-00013	Marshall County Commission v. Purdue Pharma L.P.
N.D.W.Va	5:18-cv-00014	Ohio County Commission v. Purdue Pharma L.P.
N.D.W.Va	5:18-cv-00015	Tyler County Commission v. Purdue Pharma L.P.
N.D.W.Va	5:18-cv-00016	Wetzel County Commission v. Purdue Pharma L.P.
S.D.W.Va	2:18-cv-00476	County Commission of Mingo City v. Purdue Pharma, L.P. et al
N.D.W.Va	1:18-cv-00211	Wilkerson v. United States of America
10-Circuit Court	10-C-1099-K	Settle, et al. v. Quicken Loans Inc., et al.
10 -Circuit Court	10-C-1100-H	Settle, et al. v. Quicken Loans, Inc., et al.



Court	Case No.	Case Name
01-Circuit Court	15-C-300	Stender v. Verizon
01-Circuit Court	08-C-36	Brown v. Quicken Loans Inc.
02-Circuit Court	09-C-98-H	Mandirola v. PPG Industries
13-Circuit Court	19-C-90000	In Re Perscription Opioid Pain Medication Litigation (Mass Litigation Panel)
22-Circuit Court	04-F-33	State of West Virginia v. Jeremiah D. Mongold
30-Circuit Court	18-c-2	County Commision of Mingo City v. Purdue
Human Rights Commision	17-0296	Monogahela Power Company and The Potomac Edison Company v. West Virgina Public Service Commission
N.D.W.Va	5:12-cv-00035	Tudor Insurance Co. v. Quicken Loans Inc., et al.
N.D.W.Va	5:18-CV-000009	Brooke City v Purdue
N.D.W.Va	1:16-cv-00049	White, Kenneth v. Experian Consumer Fraud Assistance; Trans Union Company; Equifax Customer Accounts; and Huntington MTG Company
S.D.W.Va	16-cv-09518	Barry v. Experian Information Solutions, Inc., et al.
S.D.W.Va	2:15-CV-02314	Rutherford-Bonifacio v. Experian Information Solutions, Inc., et al.
S.D.W.Va	2:15-cv-02314	Seletyn v. Nationstar Mortgage LLC
S.D.W.Va	2:15-CV-04983	Thomas Clark Seletyn v. Experian Information Solutions, Inc, et al.
S.D.W.Va	2:17-CV-01666	Kanawha County vs. Rite Aid
S.D.W.Va	2:17-CV-02296	Logan County vs. Cardinal Health
S.D.W.Va	2:18-CV-00370	City of Saint Albans v. Amerisourcebergen
S.D.W.Va	3:17-C-01665	Cabell County vs. Amerisourcebergen
S.D.W.Va	2:17-CV-01957	Fayette CTY vs. Cardinal Health
S.D.W.Va	3:17-CV-01962	Wayne County vs. Rite Aid
S.D.W.Va	2:12-cv-03836	West Virginia v. Cardinal Health, Inc.

Court	Case No.	Case Name
S.D.W.Va	2:15-CV-02315	Rutherford-Bonifacio v. Experian Information Solutions, Inc., et al.
S.D.W.Va	2:21-cv-105	Air Evac EMS, Inc. v. Dodrill
Supreme Court of Appeals	11-0910	Quicken Loans Inc. v. Brown
S.D.W.Va	2:21-cv-310	Air Evac EMS, Inc. v. Dodrill
S.D.W.Va	2:21-cv-00361	Asbury, Brian v. Experian
S.D.W.Va	2:21-cv-00362-JTC	Spurlock, Melendie v. Experian
S.D.W.Va	3:21-cv-00087-GMG	Pier Lafarge et al v. Experian Information Solutions, Inc., et al.
Supreme Court of Appeals of W.VA	21-0119	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
Supreme Court of Appeals of W.VA	21-0121	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
Supreme Court of Appeals of W.VA	20-0530 and 20-0531	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
Supreme Court of Appeals of W.VA	20-0579	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	Civil Action No. 17-AA-1	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	Civil Action No. 17-AA-3	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.

Court	Case No.	Case Name
West Virginia Business Court	Civil Action No. 18-AA-1 (Doddridge County)	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	No. 18-AA-1 (Ritchie County)	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	Civil Action No. 18-AA-1 (Tyler County)	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	Civil Action No. 19-AA-1	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	Civil Action No. 18-P-235-3	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.
West Virginia Business Court	Civil Action No. 20-P-83-2	Antero Resources Corporation v. Honorable Matthew R. Irby, WV Tax Commissioner et al.



Tyler County
Neil A Archer II, Clerk
Instrument 1226916
02/08/2022 @ 03:25:11 PM
COUNTY COMMISSION ORDER
OR Book 157 @ Page 225
Pages Recorded 2

Tyler County Commission

P.O. BOX 66

MIDDLEBOURNE, WEST VIRGINIA 26149

ERIC H. VINCENT
COMMISSIONER

MICHAEL V. SMITH
COMMISSIONER

LANCE M. HICKMAN
COMMISSIONER

NEIL A. ARCHER II
COUNTY CLERK

TELEPHONE
(304) 758-2102

FACSIMILE
(304) 758-2126

January 11, 2022

ORDER

Hearing Date: October 22, 2021

Property Owner: Antero Resources Corp.
1615 Wynkoop St.
Denver, CO 80202-1106

On October 22, 2021, we, the County Commission of Tyler County, sitting as the Board of Assessment Appeals, heard the appeal of Antero Resources Corporation (*hereinafter*, "Antero") of its property values for taxation purposes as set forth in its Notice of Protest dated February 19, 2021. During the hearing, this Board of Assessment Appeals received in evidence the sworn testimony of witnesses and exhibits produced by Antero Resources Corporation and the State Tax Department. At the close of the hearing, we directed the parties to brief the issues of fact and law relevant to the evidence adduced and the arguments made thereon at said hearing. Those briefs were subsequently and timely filed.

We note that Antero made arguments under the West Virginia Administrative Procedures Act (W.Va. Code § 29A-1-1 et seq.). Antero also made arguments concerning the constitutional validity of the methodology for valuation of Antero's property at issue under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, the Due Process Clauses of the State and Federal constitutions, the Equal and Uniform Taxation Clause of Article X, Section 1 of the Constitution of West Virginia, and the "Dormant Commerce Clause" (as interpreted by the U.S. Supreme Court) in relationship to the Commerce Clause found in Art. 1, Section 8 of the U.S. Constitution. In regard thereto, we further note that our authority is governed by Article IX, Section 11 of the Constitution of West Virginia to "exercise such other powers, and perform such other duties, not of a

judicial nature, as may be prescribed by law." However, by law we have been charged with passing upon whether or not the property at issue is assessed at "sixty percent of its true and actual value[.]" W.Va. Code § 11-3-24. Antero's constitutional and statutory claims are intertwined with that inquiry inasmuch as it argues that the State Tax Department's methodology does not result in a true and actual appraisal value of its property because, according to Antero, the methodology is unconstitutional. Therefore, although passing upon the substance of such claims may be argued to be an exercise of authority judicial in nature, we are of the opinion that we sit as a *quasi-judicial* body in this instance, similar to the role we exercise in the dispatch of matters probate given to us by law.


We are of the opinion that Antero's constitutional and statutory claims lack merit, for the reasons aptly described in the brief of the State Tax Commissioner. Likewise, we are not of the opinion that Antero's alleged reliance on a Notice dated June 30, 2020 authored by the former State Tax Commissioner, which we do not find to have been an authorized exercise of his rulemaking authority for the reasons stated in the brief by the current State Tax Commissioner, forms a basis for relief.

Therefore, it is ORDERED that the appeal of Antero Resources Corporation is hereby DENIED.

Antero Resources Corporation is further hereby notified that it has thirty (30) days from the date of service of this Order upon the parties to perfect an appeal hereof to the Circuit Court of Tyler County.


Michael V. Smith, Commissioner


Eric H. Vincent, Commissioner


Lance M. Hickman, Commissioner

STATE OF WEST VIRGINIA
COUNTY OF TYLER

I, Neil A Archer II Clerk of the Tyler County Commission, do hereby certify that the foregoing writing is a true and accurate copy as appears of record in my office in OFFICIAL RECORDS, Book: 157 at Page: 225, of said record.

The foregoing instrument was acknowledged before me Wednesday, February 9, 2022.



Neil A Archer II
Clerk of the Tyler County Commission

By

Deputy Clerk

TYLER COUNTY BOARD OF ASSESSMENT APPEALS

Minutes of hearings held on Tuesday, January 11, 2022

Those present:

- Michael Smith, President
- Eric Vincent, Commissioner
- Lance Hickman, Commissioner
- Lisa Jackson, Assessor
- Stephanie Miller, Chief Deputy Assessor/Board Clerk
- David L. Furbee, Tyler County Prosecuting Attorney

President Smith opened meeting of the Board of Assessment Appeals at 11:00 am.

Appeals were considered and decided from the following taxpayers:

- Charles Mossor: Denied
- Steve Anderson: Denied
- Antero Resources: Denied
- M. Barry Loudon: Denied
- McCormick Greene Limited Partnership: Denied

The meeting was adjourned at 11:19 am.



Michael Smith, Board of Assessment and Appeals
President, Tyler County Commission

STATE OF WEST VIRGINIA
COUNTY OF TYLER

I, Neil A Archer II Clerk of the Tyler County Commission, do hereby certify that the foregoing writing is a true and accurate copy as appears of record in my office in OFFICIAL RECORDS, Book: 153 at Page: 410, of said record.

The foregoing instrument was acknowledged before me Wednesday, February 9, 2022.



TY SEAL

Neil A Archer II
Clerk of the Tyler County Commission

By

Deputy Clerk



Tyler County Commission

ERIC H. VINCENT
COMMISSIONER

MICHAEL V. SMITH
COMMISSIONER

LANCE M. HICKMAN
COMMISSIONER

P.O. BOX 66

MIDDLEBOURNE, WEST VIRGINIA 26149

NEIL A. ARCHER II
COUNTY CLERK

TELEPHONE
(304) 758-2102

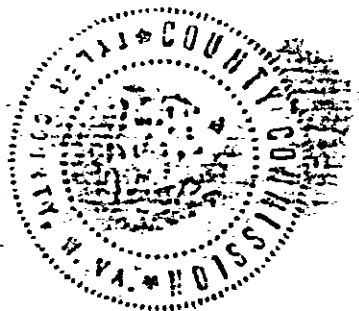
FACSIMILE
(304) 758-2126

STATE OF WEST VIRGINIA;

COUNTY OF TYLER:

I, Neil A. Archer II, Clerk of the Tyler County Commission do hereby certify that the foregoing writing is a true and accurate copy as appears on record in my office regarding the County Commission of Tyler County, West Virginia sitting as a Board of Assessment Appeals in the matter of Antero Resources Corporation.

Given under my hand and seal this 9th day of February, 2022.




Clerk, Tyler County Commission



Chase Tower, 17th Floor

P.O. Box 1588

Charleston, WV 25326-1588

(304) 353-8000 (304) 353-8180 Fax

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Writer's Contact Information

(304) 353-8154

John.meadows@step-toe-johnson.com

December 6, 2021

VIA E-MAIL & US MAIL

Neil A. Archer, II
Tyler County Clerk
P.O. Box 66
121 Main Street
Middlebourne, WV 26149
narcher@clerk.state.wv.us
aglover@clerk.state.wv.us

ENTERED

Dear Mr. Archer:

Please find the enclosed "Antero's Memorandum of Law in Support of its Notice of Protest and Election to Have matter Heard by the Board of Assessment Appeals Regarding Tax Year 2021," which brief was requested by the Tyler County Commission sitting as the Board of Assessment Appeals. Please mark it "filed" and distribute copies to the members of the Board.

Please notify us when there has been a ruling in this matter.

Sincerely,


John J. Meadows

Enclosure

cc:

Lisa Jackson (*via E-mail and U.S. Mail*)
Tyler County Assessor
P.O. Box 2
Middlebourne, WV 26149
smiller@wvassessor.com

D. Luke Ferbee (*via E-mail and U.S. Mail*)
Tyler County Prosecuting Attorney
P.O. Box 125
Middlebourne, West Virginia 26149
dlferbee@court.state.wv.us

William C. Ballard (*via E-Mail and U.S. Mail*)
Assistant Attorney General
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, WV 25305
william.c.ballard@wvago.gov

**IN THE COUNTY COMMISSION OF TYLER COUNTY, WEST VIRGINIA
SITTING AS THE BOARD OF ASSESSMENT APPEALS**

**RE: ANTERO RESOURCES CORPORATION'S
TAX YEAR 2021 NOTICE OF PROTEST AND
ELECTION TO HAVE MATTER HEARD BY
THE BOARD OF ASSESSMENT APPEALS**

**ANTERO'S MEMORANDUM OF LAW IN SUPPORT OF ITS
NOTICE OF PROTEST AND ELECTION TO HAVE MATTER HEARD BY THE
BOARD OF ASSESSMENT APPEALS REGARDING TAX YEAR 2021**

INTRODUCTION

This protest is predicated on the State's failure to take a consistent or valid position as to how natural gas providers like Antero Resources Corp. ("Antero") should be taxed on natural gas wells, choosing instead to act in an arbitrary and capricious and unconstitutional manner to benefit itself. The Tyler County Assessor (the "Assessor") has adopted the State's invalid positions.

For years, the State argued that West Virginia's *ad valorem* tax scheme for wells did not allow natural gas well owners to take deductions for their actual post-production expenses—a scheme that the prior Tax Commissioner himself said "grossly overstated" wells' taxable values and which the West Virginia Supreme Court held in *Steager v. Consol Energy, Inc.* ("*Consol*")¹ disparately taxes owners for no lawful reason. The Supreme Court acknowledged, however, that the applicable statutes and legislative rules were "silent" and "ambigu[ous]" on this question, and thus deferred to the State's interpretation in part as "not facially inconsistent" with those statutes and rules.

In the wake of *Consol*, Antero—the owner of 205 Marcellus wells in Tyler County—has filed the present protest of the Tax Department's overvaluation (adopted by the Tyler County Assessor) of Antero's revenues with regard to its Marcellus wells for tax year 2021.

The Tax Department and the Assessor continue to refuse to assess Antero's wells based on their true and actual value by applying an unfairly low operating expense deduction in a way that taxes Antero at a significantly higher rate simply because it does business across state lines—a textbook violation of the Equal Protection Clause, Dormant Commerce Clause and Due Process clauses of the United States and West Virginia constitutions.

¹ 242 W. Va. 209, 832 S.E.2d 135 (2019).

BACKGROUND

Antero owns 205 Marcellus wells in Tyler County. Antero pays significant taxes to Tyler County for its oil and gas wells.

On February 19, 2021, Antero protested the Tax Department's valuation (as adopted by the Tyler County Assessor) for its tax year 2021 *ad valorem* tax liability to Tyler County. Antero's protest relates to the assessments of its Marcellus wells in Tyler County, as the assessments do not reflect the true and actual value of the properties at issue.

The County Commission of Tyler County, sitting as a Board of Assessment Appeals (the "Board"), heard Antero's protest on October 22, 2021 (the "Hearing"). Antero files the present memorandum of law in support of its protest, as requested at the Hearing.

As presented at the Hearing, Antero has consistently supported the Tyler County community in a number of ways. Between 2018 and 2020, Antero paid \$380 million in royalties attributed to wells in Tyler County and \$49 million in royalties to mineral owners living in Tyler County.² Over the past three years, Antero upgraded a total of 28.6 miles of road in Tyler County.³ Antero spent \$11.8 million on these road upgrades in 2020 alone and has spent a total of \$24.6 million on Tyler County roads since 2018.⁴ Antero also has partnered on multiple charitable projects to strengthen the Tyler County community, including:

- Tyler County FFA Support—Over \$30,000 in the past 5 years;
- Support Ohio River Sweep Project through donations and time, spending community service hours cleaning a river bank in Paden City;

² Tr. of Hr'g Before Tyler Cty. Comm'n, at 40:15-19 (Oct. 22, 2020) [hereinafter Hr'g Tr.], attached hereto along with Taxpayer Exhibit 1 and Tax Department Exhibits 1 through 3, which were admitted by the Board at the Hearing; Taxpayer Ex. 1, Tab 2, at 3.

³ Hr'g Tr. at 41:1-5; Taxpayer Ex. 1, Tab 2, at 3.

⁴ Hr'g Tr. at 41:1-5; Taxpayer Ex. 1, Tab 2, at 3.

- Title Sponsor of 2021 Antero Resources TCHS Knights Invitational track and field event in addition to general support of high school athletic programs;
- Contribute funds to the Tyler County Commission to make country land records available online to the public;
- Support United Way of Upper Ohio Valley which serves Tyler County non-profit organizations; and
- Support Tyler County Food Pantries.⁵

On June 30, 2020, the State issued interpretative Guidance (the “June 2020 Guidance”⁶) for tax year 2021 recognizing that deductions for post-production expenses are allowed under existing law. The June 2020 Guidance explained that failing to deduct these expenses would “overvalue[]” wells for tax purposes. In so concluding, *the State accepted the very argument that Antero currently advances before the Board.*

Relying on the June 2020 Guidance, Antero submitted its valuations and tax year 2021 return in August 2020.⁷ But the Tax Department rejected Antero’s valuations, even though they were based on the June 2020 Guidance that was in effect at the time.⁸ The State then tried to cover its tracks by flip-flopping in October 2020, now purporting to withdraw the June 2020 Guidance (the “October 2020 Withdrawal”⁹). This October 2020 Withdrawal is *ultra vires* and a blatant retaliatory measure designed to make Antero’s constitutional and administrative challenges disappear. Instead of allowing Antero to deduct its actual operating expenses, the Tax Department

⁵ See Taxpayer Ex. 1, Tab 2, at 4; see also Hr’g Tr. 41:8-20.

⁶ Taxpayer Ex. 1, Tab 3, at 1-3 (W. Va. State Tax Dep’t, Important Notice to Producers of Natural Gas and Oil for Property Tax Year 2021 (June 30, 2020) [hereinafter June 2020 Guidance]).

⁷ Hr’g Tr. 65:13-67:11.

⁸ *Id.*

⁹ Taxpayer Ex. 1, Tab 3, at 4-6 (W. Va. State Tax Dep’t, Notice of Withdraw [sic] of Important Notice to Producers of Natural Gas and Oil for Property Tax Year 2021 (Oct. 9, 2020) [hereinafter October 2020 Withdrawal]).

and the Assessor now seek to cap the deduction at \$125,000 per well, which is purportedly an “average” of various producers’ expenses. This means that, as Antero established at the Hearing, the \$125,000 deduction allows producers who sell in West Virginia to deduct, on average, essentially all (or even more than all) of their expenses up to the point of sale, but not producers who sell out of state.

At the Hearing, Antero also presented clear and convincing evidence regarding its actual operating expenses relevant to tax year 2021. Antero’s expenditures include its post-production operating expenses—*i.e.*, the expenses that Antero, as a well owner that sells natural gas extracted in West Virginia to out-of-state users, necessarily incurred by getting its product to the point of sale, including expenses for gathering, compressing, fractionating, processing, and transporting gas to market—to be used in valuing its wells for tax year 2021.¹⁰ Antero did so because, unlike a natural gas seller that sells natural gas primarily in West Virginia, Antero incurs significant post-production expenses by virtue of its sale of natural gas across state lines.¹¹ Including post-production expenses, Antero’s average costs per well are over \$1.6 million in West Virginia as a whole and over \$2.8 million in Tyler County specifically¹²:

¹⁰ Hr’g Tr. 43:15-44:24; *see also* Taxpayer Ex. 1, Tab 2, at 9.

¹¹ Hr’g Tr. 41:24-42:12, 44:17-24; *see also* Taxpayer Ex. 1, Tab 2, at 8.

¹² Taxpayer Ex. 1, Tab 2, at 10; *see also* Hr’g Tr. 45:10-20, 67:12-68:8.

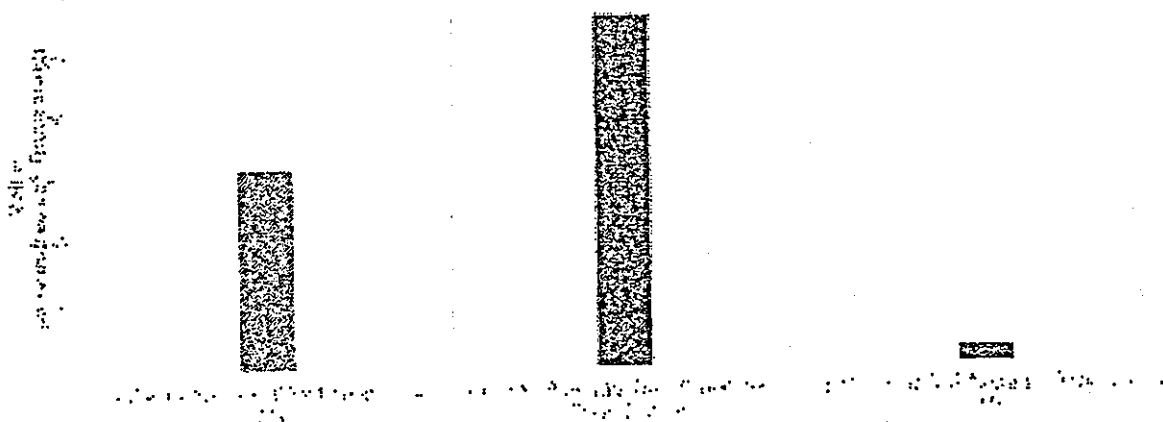
ANTERO RESOURCES CORPORATION
 TY21 WEST VIRGINIA \$ PER WELL – EXPENSES NOT ALLOWED BY STATE

		WEST VIRGINIA	
		TOTAL	Average \$/ Well (967 wells)
Gathering and Compression	238,999,170 \$	239,000,000 \$	250,000
Processing	742,663,528 \$	742,660,000 \$	770,000
Transportation	570,086,916 \$	570,090,000 \$	590,000
TOTAL	\$ 1,551,749,615	\$ 1,551,750,000	\$ 1,610,000

		TYLER	
		TOTAL	Average \$ / Well (205 wells)
Gathering and Compression	68,555,489 \$	68,560,000 \$	330,000
Processing	312,807,688 \$	312,810,000 \$	1,530,000
Transportation	201,748,483 \$	201,750,000 \$	980,000
TOTAL	\$ 583,111,661	\$ 583,120,000	\$ 2,840,000

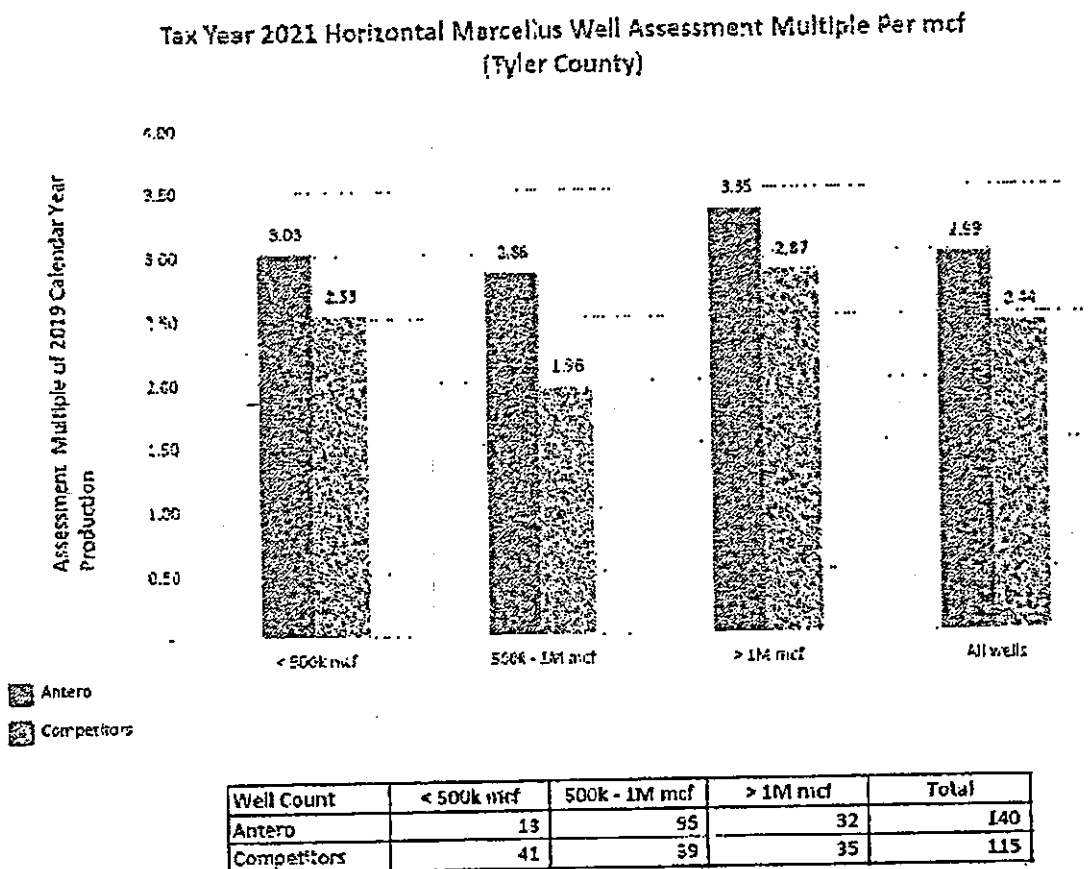
As set out in the following chart, Antero's costs per well, both in West Virginia generally and in Tyler County specifically, are much higher—for Tyler County, over 20 times higher—than the average annual deduction that is allowed by the State's valuation approach¹³:

ANTERO'S EXPENSES ARE MUCH MORE THAN THE GROSS WEIGHTED AVERAGE DEDUCTION



¹³ Taxpayer Ex. 1, Tab 2, at 13; *see also* Hr'g Tr. 70:5-14.

Antero also provided evidence showing that it is being assessed at a higher rate than its peers using the same method of production¹⁴:



As a further illustration, Antero included a comparison showing the assessment of an Antero well at a level well above the assessment of other similar wells.¹⁵

The State's scattershot approach to administrative law is a textbook example of arbitrary and capricious conduct barred by the West Virginia Administrative Procedures Act, W. Va. Code §§ 29A-1-1, *et seq.* ("APA"). Indeed, the June 2020 Guidance confirms that the Tax Department's prior methodology for calculating taxes owed on gas wells ran afoul of the APA, as well as the

¹⁴ Taxpayer Ex. 1, Tab 2, at 11; Hr'g Tr. 46:4-12, 68:9-69:5.

¹⁵ Taxpayer Ex. 1, Tab 2, at 12; Hr'g Tr. 46:16-47:7, 69:6-70:4.

Equal Protection, Commerce and Due Process clauses of the United States and West Virginia constitutions. The Board should not permit that arbitrary, capricious, and unconstitutional conduct. Instead, it should calculate the value of Antero's Tyler County gas wells for the 2021 tax year by taking into account an appropriate deduction for Antero's post-production expenses.

ARGUMENT

I. THE CURRENT ASSESSMENT VIOLATES THE FEDERAL AND STATE CONSTITUTIONS BY DISCRIMINATING AGAINST ANTERO FOR DOING BUSINESS OUT OF STATE.

A. The Current Assessment Violates Equal Protection.

The current assessment violates the federal Equal Protection Clause and state Equal and Uniform Taxation Clause. The Fourteenth Amendment to the U.S. Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."¹⁶ The West Virginia Constitution likewise mandates that "taxation shall be equal and uniform throughout the state"¹⁷ Each of these Clauses bars state action that "selects [particular persons] out for discriminatory treatment by subjecting [them] to taxes not imposed on others of the same class."¹⁸

The Tax Department's *ad valorem* tax "practice" violates these principles because it results in "gross disparities in the assessed value of generally comparable property."¹⁹ Antero sells the same product as its local competitors: natural gas produced in West Virginia. Yet solely because Antero chooses to sell its gas out of state—and thus necessarily incurs higher, nondeductible, and thus effectively more taxable expenses than local sellers to bring its products to the point of sale—the Tax Department arbitrarily singles out Antero with higher *ad valorem* taxes. The taxable value

¹⁶ U.S. Const. amend. XIV, § 2.

¹⁷ W. Va. Const. art. X, § 1.

¹⁸ *Allegheny Pittsburgh Coal Co. v. Webster Cty. Comm'n*, 488 U.S. 336, 342-46 (1989); see *Capitol Cablevision Corp. v. Hardesty*, 168 W. Va. 631, 638, 285 S.E.2d 412, 419 (1981).

¹⁹ *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 338.

of Antero's property is thereby significantly and artificially inflated in relation to local sellers' undisputedly "comparable neighboring property," which is in turn "[i]ntentional[ly]" and "systematic[ally] undervalue[d]," given that local sellers do not incur significant, nondeductible post-production expenses.²⁰ These "gross disparities in the assessed value of generally comparable property"—which are intentional and have persisted since at least tax year 2015 without justification—"contravene the constitutional right of one taxed upon the full value of his property" and thus deny Antero "equal protection of the law."²¹ Indeed, in a related case, the Business Court held that the tax regime "disparately" taxed well owners with vastly different actual expenses for no "plausible" reason and thus violated state and federal equal protection principles.²²

B. The Current Assessment Violates the Dormant Commerce Clause.

The Tax Department and County's refusal to permit Antero to deduct post-production expenses also violates the Dormant Commerce Clause. The Clause's "dormant" aspect "restricts state protectionism,"²³ caused by "state taxation."²⁴ The Tax Department's *ad valorem* tax framework violates these principles by (1) discriminating against interstate commerce and (2) subjecting Antero to the risk of multiple taxation.

²⁰ *Id.* at 342, 344.

²¹ *Id.* at 346.

²² Order Reversing the Decisions of the Doddridge Cty. Bd. of Equalization & Review & the Doddridge Cty. Bd. of Assessment Appeals Upholding the Valuation of Antero's Gas Wells for the 2016 & 2017 Tax Years at 15, 18, *Antero Res. Corp. v. The Hon. Dale Steager*, Nos. 17-AA-1, 17-AA-3 (Cir. Ct. of Doddridge Cty., W. Va., Bus. Ct. Div. Jan. 17, 2018), attached as Taxpayer Exhibit 2.

²³ *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2459 (2019).

²⁴ *Md. Comptroller of Treasury v. Wynne*, 575 U.S. 542, 548-49 (2015); *see also, e.g., Fulton Corp. v. Faulkner*, 516 U.S. 325, 330 (1996) ("In its negative aspect, the Commerce Clause prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.").

First, the tax plainly “discriminate[s] against interstate commerce.”²⁵ The United States Supreme Court has held that states cannot “tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State” or “impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.”²⁶ As the Supreme Court said more than 60 years ago, “[A] State may not lay a tax on the ‘privilege’ of engaging in interstate commerce.”²⁷ Yet that is precisely what West Virginia’s *ad valorem* tax attempts to do. The Tax Department’s bar on deductions for actual post-production expenses effectively taxes those expenses. And companies selling gas primarily to buyers outside West Virginia, like Antero, incur significantly higher post-production expenses than companies selling primarily to buyers in West Virginia.

The Tax Department’s approach thus illegally taxes gas sales “more heavily” when they “cross[] state lines,”²⁸ and directly benefits local sellers through reduced taxes at out-of-state sellers’ expense.²⁹ Indeed, the Tax Department has conceded that the tax regime’s purpose is to discriminate against interstate commerce in favor of local interests: The Tax Department has repeatedly stated that Antero should “sell [its] gas at the wellhead” in West Virginia if it wants to “pay less taxes” than it must pay by selling its product in other states.³⁰ This is a textbook case of illicit discrimination in violation of the Dormant Commerce Clause.

²⁵ *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2091 (2018).

²⁶ *Wynne*, 575 U.S. at 548-49; see also *Okla. Tax Comm’n v. Jefferson Lines, Inc.*, 514 U.S. 175, 197 (1995) (“States are barred from discriminating against foreign enterprises competing with local businesses, and from discriminating against commercial activity occurring outside the taxing State”).

²⁷ *Nw. States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458 (1959).

²⁸ *Armco Inc. v. Hardesty*, 467 U.S. 638, 642-46 (1984).

²⁹ *Bos. Stock Exch. v. State Tax Comm’n*, 429 U.S. 318, 328-32 (1977).

³⁰ Tr. of Hrg. Before Harrison Cty. Comm’n (Oct. 10, 2019), at 33; see also Tr. of Hrg. Before Tyler Cty. Bd. of Assessment Appeals (Oct. 10, 2019), at 27 (same); Tr. of Hrg. Before Doddridge Cty. Comm’n (Oct. 8, 2019), at 29 (same). Excerpts from these transcripts are attached as Taxpayer Exhibit 3.

Second, this regime unlawfully exposes Antero to the “risk of a multiple [tax] burden.”³¹ The *ad valorem* tax is revenue-based,³² but “foreign corporation[s]” like Antero must also pay “corporate net income tax.”³³ Thus, if “Ohio or any of the other 48 States” hypothetically “imposes a like tax” regime, Antero “will pay” *ad valorem* taxes to West Virginia, corporate income taxes to West Virginia, and corporate income and/or gross-receipts taxes to another state—all based on Antero’s West Virginia well revenues—while in-state sellers will pay only *ad valorem* taxes and corporate income taxes to West Virginia. That is illegal.³⁴

II. APPLICABLE STATE LAW REQUIRES THAT ANTERO BE PERMITTED TO DEDUCT ITS ACTUAL OPERATING EXPENSES.

A. The June 2020 Guidance Controls and Confirms that the *Ad Valorem* Tax Scheme Violates the APA in Multiple Respects.

Recognizing that the *ad valorem* tax regime unconstitutionally discriminates against out-of-state sellers like Antero, the Tax Department issued new guidance in June 2020 regarding how to calculate “gross receipts” when calculating the taxable value of oil and natural gas wells. That June 2020 Guidance confirmed that existing law *does*, in fact, permit gas sellers like Antero to net out production costs from gross receipts when determining taxable value, because the prior approach illegally “overvalued” wells for tax purposes. In other words, *the State accepted the very argument that Antero has advanced since 2017*. The June 2020 Guidance states in part:

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:

³¹ *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 439 (1939); *see also Wynne*, 575 U.S. at 548-50, 560-62, 565 (“Maryland’s tax scheme [was] inherently discriminatory” against interstate commerce in allowing double taxation and “operate[d] as a tariff,” in violation of the Commerce Clause).

³² *See* W. Va. Code St. R. § 110-IJ-3.8.

³³ W. Va. Code § 11-24-4(a).

³⁴ *Wynne*, 575 U.S. at 548-50, 560-62.

"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.

...

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.³⁵

The June 2020 Guidance corresponds to the rulings of the West Virginia Supreme Court. By finally acknowledging that the *ad valorem* tax scheme discriminated against out-of-state sellers like Antero, the Tax Department also echoed the ruling of the West Virginia Supreme Court in *Consol.*³⁶ The Tax Department, in its permissible discretion, determined that its prior tax scheme in fact overvalued the wells of out-of-state sellers; in other words, by barring well owners from netting out their production costs from gross receipts, the *ad valorem* tax scheme disparately taxed well owners for no lawful reason.

After the June 2020 Guidance came out, Antero attempted to follow it; in August 2020, Antero filed its tax year 2021 values that captured the field line point of sale. That calculation, however, was rejected by the State even though it complied with the June 2020 Guidance. In fact, once the State recognized the implications of its June 2020 Guidance, it attempted to reverse course in October 2020 by purporting to withdraw that June 2020 Guidance.

³⁵ See June 2020 Guidance, Taxpayer Ex. 1, Tab 3, at 1 (second emphasis added).

³⁶ 242 W. Va. 209 (2019).

The APA prohibits, and requires courts to “reverse, vacate or modify,” an “administrative . . . decision” that violates “constitutional” provisions, “statutory” provisions, or is “arbitrary or capricious.”³⁷ If the Board refuses to permit Antero to deduct its post-production expenses for tax year 2021, such a refusal would violate the APA in at least three ways.

First, the *ad valorem* tax violates “statutory” provisions.³⁸ West Virginia statutory law requires wells to be taxed according to their “true and actual value.”³⁹ But as discussed herein, the *ad valorem* tax “grossly” overstates the value of Antero’s gas wells far beyond their statutorily required “true and actual value.” The prior Tax Commissioner recognized as much while he was in private practice in 2016, writing that the framework of disallowing deductions for post-production expenses “significantly understat[es] actual operating expenses for” well owners, “fails to acknowledge all expenses needed to get natural gas to a salable state,” and causes the “values to be assigned” to gas wells for tax purposes to be “grossly overstated.”⁴⁰ The tax is thus invalid under the APA.⁴¹

Second, the Tax Department’s *ad valorem* tax is “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”⁴² The Tax Department conceded as much when it issued the June 2020 Guidance, clarifying that West Virginia’s regulations *do* allow deductions for well owners’ actual post-production expenses—an about-face from their prior, persistent litigation position and a concession that their approach has been wrong

³⁷ *Kanawha Eagle Coal, LLC v. Tax Comm’r*, 216 W. Va. 616, 619 n.10, 609 S.E.2d 877, 880 n.10 (2004) (quoting W. Va. Code § 29A-5-4(g)).

³⁸ W. Va. Code § 29A-5-4(g)(1).

³⁹ W. Va. Code §§ 11-6K-1(a), 11-6K-2(5).

⁴⁰ Letter from Dale W. Steager, Counsel for W. Va. Oil & Nat. Gas Ass’n, to Jeff Amburgey, Director, Prop. Tax Div., W. Va. State Tax Dep’t (July 29, 2016), attached hereto as Taxpayer Exhibit 4.

⁴¹ W. Va. Code § 29A-5-4(g)(1).

⁴² W. Va. Code § 29A-5-4(g)(6).

all along.⁴³ This clarification establishes that there is no rational basis to support the disallowance of such deductions, thus rendering the tax “arbitrary or capricious.”⁴⁴

Indeed, the June 2020 Guidance was a valid “interpretive rule” entitled to the force of law. The APA distinguishes between “legislative rules” and “interpretive rules.”⁴⁵ “Legislative [agency] rules are those affecting private rights, privileges or interests, in what amounts to a legislative act” and must therefore “be authorized by the West Virginia Legislature.”⁴⁶ In other words, because “legislative rules” have the power to diminish substantive rights or augment substantive liabilities, the legislative-authorization process is difficult by design: The agency must “appl[y] to the Legislature for permission . . . to promulgate [the legislative] rule” after filing a “notice of proposed rulemaking,”⁴⁷ which requires the agency to hear “public comment” on the proposed rule.⁴⁸

But “interpretive” agency rules are critically different. As the West Virginia Supreme Court has made clear, “[i]nterpretive rules . . . merely clarify an existing statute or regulation,”⁴⁹ as they “provide information or guidance to the public regarding the agency’s interpretations, policy or

⁴³ See June 2020 Guidance, Taxpayer Ex. 1, Tab 3, at 1-3.

⁴⁴ W. Va. Code § 29A-5-4(g)(6).

⁴⁵ Compare W. Va. Code § 29A-1-2(e), with W. Va. Code § 29A-1-2(c).

⁴⁶ *Appalachian Power Co. v. W. Va. Tax Dep’t*, 195 W. Va. 573, 583, 66 S.E.2d 424, 434 (1995).

⁴⁷ W. Va. Code § 29A-3-9.

⁴⁸ W. Va. Code § 29A-3-5; see also *Chico Dairy Co. v. W. Va. Human Rights Comm’n*, 181 W. Va. 238, 242, 382 S.E.2d 75, 81 (1989) (holding that a legislative rule not “submitted to, reviewed by and approved by the legislative rule-making review committee and the legislature” was “of no effect under the State [APA]” (emphasis added)); *Summers v. W. Va. Consol. Pub. Ret. Bd.*, 217 W. Va. 399, 405, 618 S.E.2d 408, 414 (2005) (“Because legislative [agency] rules have the force and effect of statutes, the presumption of prospective application [and against retroactivity] applies equally to such rules.”).

⁴⁹ *Appalachian Power*, 195 W. Va. at 583, 66 S.E.2d at 434.

opinions upon the law enforced or administered by it.”⁵⁰ “Because they only clarify existing law, interpretive rules need not go through the [difficult] legislative authorization process.”⁵¹

Applying those principles here, the June 2020 Guidance is valid as an “interpretive rule.” The Tax Department undisputedly did not submit the June 2020 Guidance for the “legislative authorization process” after a notice-and-comment period.⁵² Instead, the Tax Department simply published the Guidance as an “Important Notice.”⁵³ That ends the inquiry: the rule is interpretive, not legislative, considering the Tax Department’s own selected process. Moreover, the June 2020 Guidance is also an “interpretive rule” under the APA because it “merely clarif[ies] ... existing statute[s]” and “regulation[s],”⁵⁴ and does not “diminish[] substantive rights” or “augment[] substantive liabilities.”⁵⁵ Nothing in West Virginia statutory law has changed; it still requires “natural resources property” (including natural gas wells) to be taxed according to its “true and actual value,”⁵⁶ and nothing in the legislative rules concerning *ad valorem* taxation of oil and natural gas wells has changed.⁵⁷

In any event, the June 2020 Guidance contains all the hallmarks of an interpretive rule that clarifies existing law. Indeed, the June 2020 Guidance quotes in full the relevant legislative rule

⁵⁰ W. Va. Code § 29A-1-2(c); accord *Bailey v. Sullivan*, 885 F.2d 52, 62 (3d Cir. 1989) (“If the rule in question merely clarifies or explains existing law or regulations, it will be deemed interpretive”).

⁵¹ *Appalachian Power*, 195 W. Va. at 583, 466 S.E.2d at 434.

⁵² *Id.*; see also W. Va. Code § 29A-3-9 (requiring the Legislature’s “permission . . . to promulgate [a legislative] rule”).

⁵³ June 2020 Guidance, Taxpayer Ex. 1, Tab 3, at 1.

⁵⁴ *Appalachian Power*, 195 W. Va. at 583, 466 S.E.2d at 434.

⁵⁵ *Martinez*, 239 W. Va. at 618, 803 S.E.2d at 588.

⁵⁶ W. Va. Code §§ 11-6K-1(a), 11-6k-2(5).

⁵⁷ See W. Va. Code St. R. §§ 110-1J-1 to 110-1J-4.

that it is clarifying, which has remained on the books unchanged for years.⁵⁸ The Guidance also attaches a Tax Department graphic—available “[f]or many years”—“illustrating the field line point of sale concept” that the Guidance has now clarified as applicable when gas is “not sold in a field line sales transaction.”⁵⁹ And the Guidance clarifies that it is “important” for well producers to “appropriately adjust actual gross proceeds of sale to properly reflect the gross receipts [they] would have received had the sales transaction been a field line point of sale,” lest their wells be “overvalued for property tax purposes.”⁶⁰ Accordingly, because the June 2020 Guidance is an interpretive rule that must be applied to pending tax disputes under settled administrative law, the Tax Department’s complete failure to explain its conclusion to the contrary renders the agency’s conduct arbitrary and capricious and thus void under the APA.⁶¹

Third, as discussed elsewhere in this memorandum of law, the Tax Department’s *ad valorem* tax violates “constitutional” provisions, including the federal and state Due Process clauses, federal Equal Protection Clause, state Equal and Uniform Taxation Clause, and Dormant Commerce Clause.⁶² The tax therefore also violates the APA.

Moreover, the October 2020 Withdrawal in fact supports Antero’s position. By trying to withdraw the June 2020 Guidance in October 2020, the State *confirmed* that the June 2020 Guidance completely undermined its prior claim that Antero could not net out its production costs from gross receipts. The West Virginia Supreme Court’s decision in *Consol* further reinforces that

⁵⁸ June 2020 Guidance, Taxpayer Ex. 1, Tab 3, at 1 (“‘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.” (quoting W. Va. Code St. R. § 110-1J-3.8)); *see also* W. Va. Code St. R. § 110-1J-4.1.

⁵⁹ June 2020 Guidance, Taxpayer Ex. 1, Tab 3, at 1.

⁶⁰ *Id.*

⁶¹ *See* W. Va. Code § 29A-5-4(g)(6).

⁶² W. Va. Code § 29A-5-4(g)(1).

conclusion. There, the Court held that the applicable tax statutes and legislative rules are silent and ambiguous on the question of whether entities could net out their production costs for gross receipts.⁶³ By issuing the June 2020 Guidance, the State thus clarified the existing law, as it applies to Antero's 2021 Tax Liability.

B. The State's October 2020 Attempt to Withdraw the June 2020 Guidance Was Arbitrary, Capricious, and *Ultra Vires*.

Besides confirming that Antero's arguments regarding the June 2020 Guidance are correct, the State's attempted withdrawal of that guidance itself violated the West Virginia Administrative Procedures Act and Antero's Due Process rights. Therefore, the Withdrawal has no effect, and the State must apply the still-valid June 2020 Guidance to Antero's pending tax disputes.

Agency heads are not kings, free to rule as they please, when they please. "[A]n agency will not be permitted to [flit] serendipitously from case to case, like a bee buzzing from flower to flower, making up its rules and policies as it goes along."⁶⁴ Rather, "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change," meaning agencies "must examine the relevant data and articulate a satisfactory explanation for [their] action including a rational connection between the facts found and the choice made."⁶⁵ "About-faces" in policy that are not "reasoned" are arbitrary, capricious, and invalid.⁶⁶ Indeed, agencies cannot force the public to play "Russian Roulette" under "baffling and inconsistent" agency interpretations of

⁶³ 242 W. Va. at 221-24, 832 S.E.2d at 147-50.

⁶⁴ *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 19, 483 S.E.2d 12, 19 (1996).

⁶⁵ *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (emphasis added).

⁶⁶ *Osei v. INS*, 305 F.3d 1205, 1210 (10th Cir. 2002); see *State ex rel. Hoover*, 199 W. Va. at 19, 483 S.E.2d at 19 (1996) ("[A]n agency will not be permitted to [flit] serendipitously from case to case, 'like a bee buzzing from flower to flower, making up its rules and policies as it goes along.'").

existing law.⁶⁷ Consistent with these principles, courts have invalidated arbitrary and capricious flip flopping in agency decision-making.

For example, in *Casa De Maryland v. U.S. Department of Homeland Security*,⁶⁸ the Fourth Circuit held that an agency's "decision to rescind" immigration rules "was arbitrary and capricious" and had to be "set aside" where the agency claimed that prior rules were "unlawful" but "failed to give a reasoned explanation for the change in policy," as the purported rescission did not "identify any statutory provision with which the [old] policy conflict[ed]."

Similarly, in *Good Fortune Shipping SA v. Comm'r*,⁶⁹ the D.C. Circuit held that the IRS's double flip-flop on whether tax exemptions for reciprocal foreign taxes were available based on ownership of "bearer shares" was inconsistent, "inexplicable," and therefore "unreasonable."

Likewise, in *Organized Village of Kake v. U.S. Department of Agriculture*,⁷⁰ the Ninth Circuit held that an agency acted arbitrarily and capriciously by issuing new rules that "made factual findings directly contrary to" prior rules and "expressly relied on those findings to justify the policy change" "only two years" later, because the "absence of a reasoned explanation for disregarding previous factual findings violates the APA." Other courts have held similarly.⁷¹

The October 2020 Withdrawal violates these settled principles of administrative law, as the State "failed to give any persuasive justification for the abrupt change in [its] position"—and amid

⁶⁷ *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 629-30 (D.C. Cir. 2000).

⁶⁸ 924 F.3d 684, 704-05 (4th Cir. 2019) (an "unexplained inconsistency in agency policy indicates that the agency's action is arbitrary and capricious, and therefore unlawful").

⁶⁹ 897 F.3d 256, 263-64 (D.C. Cir. 2018).

⁷⁰ 795 F.3d 956, 966-69 (9th Cir. 2015) (en banc).

⁷¹ See, e.g., *Jimenez-Cedillo v. Sessions*, 885 F.3d 292, 297 (4th Cir. 2018) (similarly "set[ting] aside" as "arbitrary and capricious" an agency rule that "abandon[ed]" prior policy without a "reasoned explanation"); *Friends of Alaska Nat'l Wildlife Refuges v. Bernhardt*, 381 F. Supp. 3d 1127, 1143 (D. Alaska 2019) (likewise concluding that agency action was "arbitrary and capricious under the APA" because the agency "reverse[d]" its "previous policy ... without any reasoned explanation").

pending litigation concerning that same position no less.⁷² The sole reason that the State has offered to support its October 2020 Withdrawal of the June 2020 Guidance is that the June 2020 Guidance effectuated a “substantive change” in the applicable statutes and legislative rules without being “implemented by legislative rule or by statute.”⁷³ Thus, the State claims that the June 2020 Guidance was supposedly “issued without legal authority” and “must be withdrawn.”⁷⁴ But the legal premise of this reasoning is “so implausible” it violates the APA.⁷⁵

That is because the State is plainly wrong that the June 2020 Guidance effectuated a “substantive change[]” in the relevant statutes and legislative rules. Nothing in West Virginia’s statutory law has changed; it still requires “natural resources property” (including natural gas wells) to be taxed according to its “true and actual value.”⁷⁶ And nothing in the legislative rules concerning *ad valorem* taxation of natural gas wells has changed either.⁷⁷ Indeed, those legislative rules still define “[o]perating expenses” as “only those ordinary expenses which are directly related to the maintenance and production of natural gas and/or oil.”⁷⁸ The June 2020 Guidance even quotes in full the relevant legislative rule that it is clarifying, which has been on the books and

⁷² *Ramirez v. U.S. Customs & Border Prot.*, 477 F. Supp. 2d 150, 157 (D.D.C. 2007).

⁷³ October 2020 Withdrawal, Taxpayer Ex. 1, Tab 3, at 4.

⁷⁴ *Id.* at 5.

⁷⁵ *State Farm*, 463 U.S. at 43; see also *Casa De Md.*, 924 F.3d at 704-05 (holding that an agency’s “decision to rescind” rules “was arbitrary and capricious” where the agency “failed to give a reasoned explanation for the change in policy” and its conclusion that prior policy was allegedly “unlawful”).

⁷⁶ W. Va. Code §§ 11-6K-1(a), -2(5).

⁷⁷ See W. Va. Code St. R. §§ 110-1J-1 to -4.

⁷⁸ W. Va. Code § 110-1J-3.16.

unchanged for years.⁷⁹ The June 2020 Guidance therefore does not effect a “substantive change[]” to these provisions.

Instead, the June 2020 Guidance merely changes a prior agency interpretation of these statutes and legislative rules. In fact, the State openly admits this at page one of the October 2020 Withdrawal: “The [June 2020 Guidance] constitutes a material and substantive change of the application of the Tax Department’s legislative rules” by the State, and “[t]he Tax Department’s [June 2020 Guidance] materially changed the longstanding and reasonable construction” of these statutes and legislative rules by the State.⁸⁰ Indeed, it is critical to bear in mind that the State’s allegedly “longstanding” prior “construction”—that post-production expense deductions are not allowed—was advanced only as a litigation position in *Consol* and never in a “legislative rule.”⁸¹ Accordingly, the State’s current assertions that it needed a “legislative rule” to change its mere litigation position and interpretation of existing statutes and legislative rules through the June 2020 Guidance is “so implausible” that it is arbitrary and capricious.⁸²

Moreover, the State’s assertion in the October 2020 Withdrawal that the June 2020 Guidance effected a “substantive change” in the statutes and legislative rules that could be accomplished only through a “legislative rule” and not an “interpretive rule” is flatly contrary to *Consol*. *Consol* held that West Virginia tax law is silent and ambiguous on the question whether deductions for actual post-production expenses are permitted,⁸³ a point that the State emphasized

⁷⁹ June 2020 Guidance, Taxpayer Ex. 1, Tab 3, at 1 (“‘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.” (quoting W. Va. Code St. R. § 110-1J-3.8)).

⁸⁰ October 2020 Withdrawal, Taxpayer Ex. 1, Tab 3, at 4.

⁸¹ See *Consol*, 242 W. Va. at 216, 222, 832 S.E.2d at 142, 148.

⁸² *State Farm*, 463 U.S. at 43.

⁸³ *Consol*, 242 W. Va. at 221-24, 832 S.E.2d at 147-50.