

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 17-AA-1

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

Respondents.

**ANSWER OF
WEST VIRGINIA STATE TAX DEPARTMENT AND
ASSESSOR JACKSON L. HAYES TO COMPLAINT**

COME NOW Dale W. Steager, State Tax Commissioner of the State of West Virginia and the Honorable Jackson L. Hayes, Assessor of Tyler County, (hereinafter, collectively referred to as "Tax Commissioner" or "Tax Department"), by counsel, in order to Answer the *Complaint* filed in this matter and states as follows. The *Complaint* was filed with the Circuit Court of Tyler County on or about March 17, 2017.

ANSWER TO COMPLAINT

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

1. The Tax Department admits the allegations set forth in Paragraph 1 of the *Complaint*.

2. Paragraph 2 of the *Complaint* summarizes the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court. Furthermore, the procedures applied by the Tax Department are set forth in the testimony of Cindi Hoover, Senior Appraiser, as recorded in the transcript of the February 1, 2017 hearing.

3. The Tax Department states that sentence 1 of Paragraph 3 of the *Complaint* generally summarizes the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. The Tax Department admits that in prior years it invited taxpayers to submit actual operating expenses per well for review and consideration by the Property Tax Division as alleged in the first part of sentence 2 of Paragraph 3. The Tax Department lacks sufficient information to form an opinion with regards to the truth or falsity of the remaining allegations in of sentence 2; consequently, those allegations are denied. The Tax Department states that the applicable legislative rules do not authorize the Tax Department to utilize statewide allocated operating expenses or actual operating expenses for each well under protest for taxpayers as demanded by Antero Resources Corporation (hereinafter referred to as "Antero"); furthermore, Antero has failed to cite any statutory authority for the use of statewide allocated operating expenses for individual taxpayers as demanded by the Taxpayer. The Tax Department admits that 2016 and 2017 Administrative Notices did not invite taxpayers to submit actual operating expenses per well for review and consideration by the Property Tax Division as in prior years as alleged in the first part of sentence 3 of Paragraph 3. The Tax Department denies the remaining allegations set forth in Paragraph 3 of the *Complaint*. To the

extent that a further response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

4. The Tax Department denies that Antero provided actual operating expenses per well as alleged in Paragraph 4 of the *Complaint*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth in the first sentence of Paragraph 4 of the *Complaint* regarding the basis on which Antero calculated operating expenses; consequently, those allegations are denied. The Tax Department admits that the valuation for the 2017 TY is based on the 2015 CY income data as alleged in Paragraph 4 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 4 of the *Complaint*.

5. The Tax Department denies allegations set forth in sentence 1 of Paragraph 5 of the *Complaint*. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth in sentences 2, 3, 4, and 5, of Paragraph 5, of the *Complaint* regarding the basis on which Antero calculated operating expenses; consequently, those allegations are denied. The Tax Department states that the procedure to calculate the "average annual industry operating expenses per well" used to value operating oil and gas wells is set forth in the legislative rules, administrative notices and other supporting documents, as alleged in Paragraph 5 of the *Complaint*. See W. Va. St. R. § 110-1J-4.3. The Tax Department further states that the legislative rules, administrative notices and other documents from the Tax Department speak for themselves; the Tax Department objects to any attempts to characterize the supporting documentation issued by the Tax Department. The Tax Department denies that the legislative rule values different gas well operators inconsistently based upon the distance of the gas well

from the market as alleged in sentence 6 Paragraph 5 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 5 of the *Complaint*.

6. Based on a review of Administrative Notice 2017-08, the Tax Department admits that maximum operating expense for Marcellus horizontal wells is 20% of gross receipts derived from gas production not to exceed \$175,000 as alleged in sentence 1 of Paragraph 6 of the *Complaint*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth in sentence 1 of Paragraph 6, of the *Complaint* regarding the basis on which Antero calculated operating expenses; consequently, those allegations are denied. The Tax Department states that the expenses for calculating the value of operating oil and gas wells are set forth in the legislative rules, administrative notices and other supporting documents as alleged in sentence 2 of Paragraph 6 of the *Complaint*. The Tax Department further states that the legislative rules, administrative notices and other documents, from the Tax Department speak for themselves; the Tax Department objects to any attempts to characterize the supporting documentation issued by the Tax Department. The Tax Department denies the remaining allegations set forth in sentence 2 of Paragraph 6 of the *Complaint*. The Tax Department denies that it has erroneously calculated the average annual industry operating expense as alleged in sentences 3 Paragraph 6. The Tax Department denies the remaining allegations in sentence 3 of Paragraph 6. The Tax Department denies the allegations set forth in sentences 4 and 5 of Paragraph 6 of the *Complaint*. The Tax Department denies that it has failed to value Antero's gas wells incorrectly in any manner as alleged in Paragraph 6 of the *Complaint*.

7. The Tax Department admits that Antero appeared at a Board of Assessment Appeals hearing in February 2017, presented a report from Altus group, and that the BAA made no changes to the Tax Department's valuation as alleged in Paragraph 7 of the *Complaint*.

However, the Tax Department denies that Antero presented clear and convincing to support its protest, that Antero provided actual operating expenses for each well, and the remaining allegations set forth in Paragraph 7 of the *Complaint*.

8. The Tax Department lacks sufficient information to determine whether the appeal before the Circuit Court of Tyler County was filed timely; consequently, that allegation is denied. The Tax Department denies the remaining allegations set forth in Paragraph 8 of the *Complaint*.

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

10. The Tax Department denies that the expense survey was inaccurate or incomplete in any manner as alleged in Paragraph 10 of the *Complaint*. The Tax Department further denies that it has valued Antero's operating gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 10 of the *Complaint*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth Paragraph 9 of the *Complaint*; consequently, those allegations are denied.

11. The Tax Department admits that it recalculated the average annual industry operating expenses from \$150,000 used in the 2016 TY to \$175,000 for the 2017 TY based upon information received from Antero Resources in 2016 as alleged in sentence 1 of Paragraph 11 of the *Complaint*. According to the testimony of Cindi Hoover, Special Properties Manager in the Property Tax Division, the Tax Department removed the survey data previously provided by Antero Resources since Antero argued that its survey responses were incomplete and inaccurate. The Tax Department also removed the outlying data (highest and lowest data points) from the 2014 survey and recalculated the average annual industry operating expense deduction. As a

result, the Tax Department increased the allowable expense deduction by \$25,000 per well. *See* Transcript of February 1, 2017 Hearing at PP. 60 & 62-63. The Tax Department denies that the recalculation is erroneous and that the 2014 survey is flawed as alleged in sentence 2 of Paragraph 11. The Tax Department further denies that excluding incomplete data provided by Antero invalidates the 2014 survey as alleged in sentence 2 of Paragraph 11. The Tax Department further denies that it has valued Antero's operating gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 11 of the *Complaint*.

12. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth Paragraph 12 of the *Complaint*; consequently, those allegations are denied. The Tax Department further denies that it has valued Antero's operating gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 12 of the *Complaint*.

13. The Tax Department denies that Antero provided actual operating expenses for each of the eighteen gas wells being challenged in Tyler County for the 2017 TY as alleged in Paragraph 13 of the *Complaint*. The Tax Department denies that it is authorized by statute or legislative rule to use actual operating expenses for each well for individual taxpayers in valuing the property instead of the "average annual industry operating expenses" required pursuant to W.Va. St. R. § 110-1J-4.3 as alleged in Paragraph 13 of the *Complaint*; the Tax Department demands strict proof thereof. The Tax Department denies that it has erroneously valued Antero's gas wells under the applicable laws of this State as alleged in Paragraph 13 of the *Complaint*. The Tax Department admits that it did not change the expenses used to value Antero's property and that it utilized the "average annual industry operating expenses" required

pursuant to W.Va. St. R. § 110-1J-4.3 as alleged in the last sentence of Paragraph 13 of the *Complaint*.

14. Paragraph 14 of the *Complaint* summarizes some of the mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

15. The Tax Department admits that in prior years the Tax Department stated in the administrative notices that it would consider, and possibly use, the actual operating expenses from individual producers in the valuation of the property as alleged in the first sentence of Paragraph 15 of the *Complaint*. The Tax Department denies that it is authorized by statute or legislative rule to use actual operating expenses per well for individual taxpayers in valuing the property instead of the "average annual industry operating expenses" required pursuant to W.Va. St. R. § 110-1J-4.3 as alleged in Paragraph 15 of the *Complaint*; the Tax Department demands strict proof thereof. The Tax Department denies that Antero has submitted the actual operating expenses for each of the eighteen gas wells being challenged in Tyler County as alleged in the second sentence of Paragraph 15 of the *Complaint*.

16. The Tax Department states that the proper expense deductions for valuing operating oil and gas wells are set forth in the legislative rules, administrative notices and other supporting documentation issued by the Tax Department as alleged in the first sentence of Paragraph 16 of the *Complaint*. The Tax Department further states that the legislative rules, administrative notices and other documents from the Tax Department speak for themselves; the Tax Department objects to any attempts to characterize the supporting documentation issued by

the Tax Department. The Tax Department denies that Antero has proven that the average operating expenses for each of the eighteen gas wells being challenged in Tyler County is \$817,000 as alleged in the second sentence of Paragraph 16 of the *Complaint*. The Tax Department denies that Antero has submitted the actual operating expenses for each of the gas wells being challenged in Tyler County as alleged in the second sentence of Paragraph 16 of the *Complaint*. The Tax Department denies that it has valued Antero's gas wells erroneously in any manner as alleged in the third sentence of Paragraph 16 of the *Complaint*. The Tax Department admits that Antero hired Hein & Associates as alleged in the fourth sentence of Paragraph 16 of the *Complaint*; the Tax Department denies that the value calculated by Hein & Associates represents the true and actual value of Antero's property as alleged in the fourth sentence of Paragraph 16. The Tax Department denies the remaining allegations set forth in Paragraph 16 of the *Complaint*.

17. The Tax Department admits the allegations set forth in Paragraph 17 of the *Complaint*.

18. The Tax Department denies that it failed to support the refusal to accept Antero's proffered allocated expenses with credible evidence as alleged in the first part of Paragraph 18. Furthermore, the Tax Department admits that the procedures utilized by the State Tax Department are in alignment with the legislative rules and the law as alleged in the remaining portion of Paragraph 18. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations regarding Antero's point of sale for natural gas as alleged in the first part of Paragraph 18; consequently, those allegations are denied. The Tax Department further denies that it has valued Antero's gas wells erroneously in any manner as alleged in Paragraph 18 of the *Complaint*.

19. The Tax Department admits that Elizabeth Burg, of Altus, testified on behalf of Antero at the Board of Assessment Appeals hearing in February 2017, and that numerous documents were admitted into the record at the Board of Assessment Appeals hearing as alleged in Paragraph 19. The Tax Department denies the remaining allegations set forth in Paragraph 19 of the *Complaint*. The Tax Department further denies that Antero's proffered evidence constitutes clear and convincing evidence to demonstrate that the Tax Department's valuation is erroneous in any manner as alleged in Paragraph 19 of the *Complaint*.

20. The Tax Department admits that Antero presented testimony from Altus, a consulting company, at the Board of Assessment Appeal hearing in February 2017 as alleged in Paragraph 20 of the *Complaint*. The Tax Department denies that Antero has submitted the actual operating expenses for each of the gas wells being challenged in Tyler County as alleged Paragraph 20 of the *Complaint*. The Tax Department further denies that it has valued Antero's gas wells erroneously in any manner as alleged in Paragraph 20 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 20 of the *Complaint*.

21. The Tax Department admits the allegations set forth in the first sentence of Paragraph 21 of the *Complaint*. The Tax Department denies the allegations contained in the second sentence of paragraph 21 and demands strict proof thereof. The Tax Department denies that Ms. Burg's testimony demonstrates that Antero's gas wells have been valued incorrectly under West Virginia law. The Tax Department admits the allegations set forth in the third sentence of Paragraph 21 of the *Complaint*.

22. The Tax Department admits that Altus proposed "an alternate approach" to valuing Antero's gas wells in Tyler County as alleged in Paragraph 22 of the *Complaint*. The Tax Department denies that the "an alternate approach" advocated by Antero is authorized under

the legislative rule and the applicable statutes as alleged in Paragraph 22 of the *Complaint*; the Tax Department demands strict proof thereof. The Tax Department further denies that it valued Antero's operating gas wells erroneously in any manner as alleged in Paragraph 22 of the *Complaint*.

23. The Tax Department lacks sufficient information to form an opinion with regards to the truth or falsity of the allegations that the complete record will be filed with the Circuit Court of Tyler County timely as required by law and alleged in the third sentence of Paragraph 23 of the *Complaint*; consequently, those allegations are denied. The Tax Department admits the remaining allegations set forth in Paragraph 23 of the *Complaint*.

24. The Tax Department admits that the Board of Assessment Appeals affirmed the Tax Department's valuation of the gas wells by an order and that Antero appealed the decision to the Circuit Court of Tyler County as alleged in Paragraph 24 of the *Complaint*. The Tax Department lacks sufficient information to form an opinion with regards to the truth or falsity of the remaining allegations in Paragraph 24; consequently, those allegations are denied.

25. Paragraph 25 of the *Complaint* summarizes the law regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

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

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

28. The Tax Department denies the allegations set forth in the first sentence of Paragraph 28 of the *Complaint*; the Tax Department states that the Taxpayers have failed to cite any statutory authority or legislative rule requiring the use of an individual taxpayer's actual operating expenses in calculating the value of gas wells and demands strict proof thereof. The Tax Department denies that Antero presented actual operating expenses for each well under protest and that the information provided by Antero is the type of information contemplated by the legislative rule as alleged in the last sentence of Paragraph 28. The remaining allegations set forth in Paragraph 28 of the *Complaint* summarize the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

29. Paragraph 29 of the *Complaint* summarizes the law regarding the burden of proof for taxpayers challenging the valuation of property and the record to be reviewed in circuit court for the valuation of property for *ad valorem* tax purposes. No response is required. To the extent that a response may be applicable, the Tax Department denies that it failed to correctly value the Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

30. The Tax Department denies the allegations set forth in the first sentence of Paragraph 30 of the *Complaint*. The remainder of Paragraph 30 recites Antero's prayer for relief. No response is necessary. To the extent that a response may be applicable, the Tax Department denies that any relief is warranted in this case.

31. The Tax Department denies that it has discretion to select the appraisal methodology for operating oil and natural gas wells as alleged in Paragraph 31 of the *Complaint*. According to the applicable legislative rules, the value of oil and natural gas producing properties "...shall be determined through the process of applying a yield capitalization model to the net receipts...." See W. Va. St. R. § 110-1J-4.1. The Tax Department is required to use the income approach to value for operating oil and gas wells under the legislative rule. The Tax Department further denies that it failed to correctly apply the yield capitalization model to Petitioner's property for tax purposes and states that legal conclusions will be determined by the Court.

32. The Tax Department denies the allegations set forth in Paragraph 32 of the *Complaint*.

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

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

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

WHEREFORE, State Tax Commissioner and the Honorable Jackson L. Hayes, Assessor

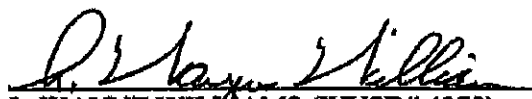
of Tyler County, pray the Honorable Court DISMISS the Complaint with prejudice and for such additional relief as the Court deems just and proper.

Respectfully submitted,

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

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IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 17-AA-1
Honorable Jeffrey D. Cramer

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE JACKSON L. HAYES,
Assessor of Tyler County, and
THE COUNTY COMMISSION OF TYLER COUNTY,
Sitting as a Board of Equalization and Review,


Respondents.

CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General, do hereby certify that the foregoing
"Answer Of West Virginia State Tax Department and Honorable Assessor Jackson L. Hayes To
Complain!" was served upon the following by depositing a copy of the same in the United States
Mail, via first-class postage prepaid, this 18th day of April, 2017, addressed as follows:

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