

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

**Civil Action No. 17-AA-1
Honorable Timothy L. Sweeney**

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

**DODDRIDGE COUNTY
CIRCUIT COURT**

FEB 14 2017

Respondents.

**MICHELE D. BRITTON
CIRCUIT CLERK**

**ANSWER OF
WEST VIRGINIA STATE TAX DEPARTMENT
AND ASSESSOR DAVID SPONAUGLE TO COMPLAINT**

COME NOW Dale W. Steager, State Tax Commissioner of the State of West Virginia and the Honorable David Sponaugle, Assessor of Doddridge 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 Doddridge County on or about January 20, 2017. The *Complaint* was served on the Tax Department on or about January 26, 2017 and served on the Assessor on or around January 20, 2017. A *Notice of Bona Fide Defense* was filed on behalf of Assessor Sponaugle. Therefore, the Answer for both parties is now due February 15, 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 October 2016 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 for individual taxpayers or other substitute figure as demanded by Antero Resources Corporation (hereinafter referred to as

"Antero"); furthermore, Antero has failed to cite any statutory authority for the use of statewide allocated operating expenses for individual taxpayers as demanded by the Taxpayer. The Tax Department admits that Administrative Notice 2016-08 does 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 that Antero submitted actual operating expenses per well for review and consideration as alleged in sentence 4 of Paragraph 3. The Tax Department states that Administrative Notice 2016-08 complies with the applicable state law and legislative rules contrary to the remaining allegations set forth in sentence 4 of Paragraph 3. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth in sentence 3 of Paragraph 3; consequently, those allegations are denied. 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 for the 150 gas wells located in Doddridge County as alleged in sentence 1 of Paragraph 4 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 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 2016 TY is based on the 2014 CY income data as alleged in sentence 2 of 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, and 4 of Paragraph 5, of the *Complaint* regarding the basis on which Antero calculated operating expenses; consequently, those allegations are denied. Further, the Tax Department denies that it has erroneously valued Antero's property in any manner as alleged in Paragraph 5.

6. The Tax Department states that the expenses for calculating the value of operating oil and gas wells are set forth in the administrative notices and other supporting documents as alleged in sentence 1 of Paragraph 6 of the *Complaint*. The Tax Department further states that the administrative notices and other documents from the Tax Department speak for themselves; the Tax Department objects to any attempts to characterize the supporting documentation issued by the Tax Department. The Tax Department denies the remaining allegations set forth in Paragraph 6 of the *Complaint*.

7. The Tax Department admits that Antero appeared at a Board of Assessment Appeals hearing in October 2016, 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 evidence to support its protest, that Antero provided actual operating expenses for the 150 gas wells under protest, that Kirsten Evans correctly calculated the value of the gas wells under West Virginia law, and that the testimony of Kirsten Evans represented the true and actual value of the property at issue. The Tax Department admits that Hein & Associates proffered a value for the gas wells at issue as alleged in Paragraph 7; however, the Tax Department denies that Hein & Associates' proffered value represented the true and actual value of the property at issue. Further, the Tax

Department denies that it has erroneously valued Antero's property in any manner as alleged in Paragraph 7. The Tax Department denies 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 Doddridge County was filed timely; consequently, that allegation is denied. The Tax Department denies that Antero provided actual operating expenses for the 150 gas wells located in Doddridge County as alleged Paragraph 8 of the *Complaint*. 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 10 of the *Complaint*; consequently, those allegations are denied.

11. The Tax Department denies that the use of the "average annual industry operating expenses," required pursuant to W.Va. St. R. § 110-1J-4.3, in valuing Antero's producing gas wells results in an erroneous valuation of the property for ad valorem tax purposes as alleged in Paragraph 11 of the *Complaint*. The Tax Department further denies that it has erroneously valued Antero's gas wells under the applicable laws of this State as alleged in Paragraph 11 of the *Complaint*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth Paragraph 11; consequently, those allegations are denied.

12. The Tax Department denies that Antero provided actual operating expenses for each of the more than 150 gas wells being challenged in Doddridge County as alleged in Paragraph 12 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 or any other substitute figure 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 12 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 12 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 12 of the *Complaint*.

13. Paragraph 13 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.

14. 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 14 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 or any other

substitute figure 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 14 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 150 gas wells being challenged in Doddridge County as alleged in the second sentence of Paragraph 14 of the *Complaint*. The Tax Department lacks sufficient information to determine the truth or falsity of the remaining allegations set forth Paragraph 14 of the *Complaint*; consequently, those allegations are denied.

15. The Tax Department states that the proper expense deductions for valuing operating oil and gas wells are set forth in the administrative notices and other supporting documentation issued by the Tax Department as alleged in sentence 1 of Paragraph 15 of the *Complaint*. The Tax Department further states that the administrative notices and other documents from the Tax Department speak for themselves; the Tax Department objects to any attempts to characterize the supporting documentation issued by the Tax Department as alleged in sentence 1 of Paragraph 15. The Tax Department denies that Antero has proven that the actual operating expenses per well for each of the more than 150 gas wells being challenged in Doddridge County is \$684,000 as alleged in sentence 2 of Paragraph 15 of the *Complaint*. The Tax Department denies that Antero has submitted the actual operating expenses per well for each of the more than 150 of gas wells being challenged in Doddridge County as alleged in sentence 2 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 or any other substitute figure 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 it has valued Antero's gas wells erroneously in any manner as alleged in sentence 3 of Paragraph 15 of the *Complaint*. The Tax Department admits that the Tax Department and Antero calculated different values for the gas wells as alleged in sentence 4 of Paragraph 15 of the *Complaint*. However, the Tax Department denies that Antero correctly applied the Yield Capitalization Model as alleged in sentence 4 of Paragraph 15. The Tax Department admits that Antero hired Hein & Associates to value its operating gas wells in Doddridge County and that Hein & Associates valued the wells at \$291.7 million as alleged in sentences 5 & 6 of Paragraph 15. The Tax Department denies that Hein & Associates' valuation represents the true and actual value for the gas wells under West Virginia law as alleged in sentences 5 & 6 of Paragraph 15. The Tax Department denies the remaining allegations set forth in Paragraph 15 of the *Complaint*.

16. The Tax Department admits the allegations set forth in Paragraph 16 of the *Complaint*.

17. 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 sentence 1 of Paragraph 17. Furthermore, the Tax Department admits that it would be impractical and expensive for the Tax Department to review the actual expenses for individual wells for every taxpayer throughout the State and 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 17. The Tax Department denies that Antero has submitted the actual operating expenses for each of the more than 150 gas wells being challenged in Doddridge County as alleged Paragraph 17 of the *Complaint*. The Tax Department further denies that it has erroneously valued Antero's property as alleged Paragraph 17 of the *Complaint*.

18. The Tax Department admits that Kirsten Evans, of Altus, testified on behalf of Antero at the Board of Assessment Appeals hearing in October 2016, as alleged in Paragraph 18 of the *Complaint*. The Tax Department denies that the testimony of Kirsten Evans represented the true and actual value of the property at issue as alleged in Paragraph 18. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations that charts and documentation were admitted into the record as Petitioner's Exhibits 3, 4, 5, 6, 7, 8, 9, and 10 as alleged in Paragraph 18 of the *Complaint*; consequently, those allegations are denied.¹ The Tax Department denies the remaining allegations set forth in Paragraph 18 of the *Complaint*.

19. The Tax Department admits that Antero presented testimony from Altus, a consulting company, at the Board of Assessment Appeal hearing in October 2016 as alleged in Paragraph 19 of the *Complaint*. The Tax Department denies that Antero has submitted the actual operating expenses for each of the more than 150 gas wells being challenged in Doddridge County as alleged Paragraph 19 of the *Complaint*. The Tax Department further denies that it has valued Antero's gas wells erroneously in any manner as alleged in Paragraph 19 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 or any other substitute figure 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 19 of the *Complaint*; the Tax Department demands strict proof thereof. The Tax Department lacks sufficient information to form an opinion with regards to the truth or falsity of the allegations in the last sentence of Paragraph 19; consequently, those allegations are denied. The Tax Department denies the remaining allegations set forth in Paragraph 19 of the *Complaint*.

¹ See Paragraph 22 of the *Complaint* regarding the fact that the record was not filed with the Circuit Court at the time the petition for appeal was filed.

20. The Tax Department admits the allegations set forth in the first two sentences of Paragraph 20 of the *Complaint*. The Tax Department admits that Mr. Schoephoerster testified regarding the decline rate and operating expenses for the Antero wells as alleged in the third sentence of Paragraph 20; the Tax Department denies that Mr. Schoephoerster's testimony demonstrates that Antero's gas wells have been valued incorrectly under West Virginia law. The Tax Department further denies that Mr. Schoephoerster's testimony reflected the true and actual value of Antero's gas wells under protest in Doddridge County. The Tax Department admits the allegations set forth in the fourth sentence of Paragraph 20 of the *Complaint*.

21. The Tax Department admits that Altus proposed "an alternate approach" to valuing Antero's gas wells in Doddridge County as alleged in Paragraph 21 of the *Complaint*. The Tax Department denies that the "alternate approach" advocated by Antero is authorized under the legislative rule and the applicable statutes as alleged in Paragraph 21 of the *Complaint*; the Tax Department demands strict proof thereof. In addition, the Tax Department denies that the "alternate approach" advocated by Antero would produce the true and actual value of the property as required under West Virginia law. The Tax Department further denies that it valued Antero's operating gas wells erroneously in any manner as alleged in Paragraph 21 of the *Complaint*.

22. 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 Doddridge County timely as required by law and alleged in the third sentence of Paragraph 22 of the *Complaint*; consequently, those allegations are denied. The Tax Department admits the remaining allegations set forth in Paragraph 22 of the *Complaint*.

23. 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 Doddridge County as alleged in Paragraph 23 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 23; consequently, those allegations are denied.

24. Paragraph 24 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.

25. Paragraph 25 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.

26. Paragraph 26 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.

27. The Tax Department denies the allegations set forth in the first sentence of Paragraph 27 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 or any other substitute figure in calculating the value of gas wells and

demands strict proof thereof. The Tax Department denies that Antero presented actual operating expenses for each of the 150 gas wells 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 27. 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 ad valorem tax purposes and states that legal conclusions will be determined by the Court. The remaining allegations set forth in Paragraph 27 of the *Complaint* summarize the law and mechanical procedures regarding the valuation of property for *ad valorem* tax purposes. No response is required.

28. Paragraph 28 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.

29. The Tax Department denies the allegations set forth in the first sentence of Paragraph 29 of the *Complaint*. The Tax Department denies that Antero has submitted the actual operating expenses per well for each of the more than 150 of gas wells being challenged in Doddridge County as alleged in in the first sentence of Paragraph 29 of the *Complaint*. The Tax Department further denies that it is authorized by statute or legislative rule to use actual operating expenses per well for individual taxpayers or any other substitute figure 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 in the first sentence of Paragraph 29 of the *Complaint*; the Tax Department demands strict proof thereof. The remainder of Paragraph 29 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.

30. The Tax Department denies that it has discretion to select the appraisal methodology for operating oil and natural gas wells as alleged in Paragraph 30 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.

31. The Tax Department denies the allegations set forth in Paragraph 31 of the *Complaint*.

32. The Tax Department denies that it has valued CNX Gas' wells in violation of the United States Constitution or the West Virginia Constitution as alleged in Paragraph 32 of the *Complaint*. Further, the Tax Department denies that it has erroneously valued Antero's property in any manner as alleged in Paragraph 32. The Tax Department lacks sufficient information to form an opinion with regards to the truth or falsity of the remaining allegations in Paragraph 32 of the *Complaint*; consequently, those allegations are denied.

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

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

AFFIRMATIVE DEFENSE NUMBER 1

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

AFFIRMATIVE DEFENSE NUMBER 2

36. Antero Gas has failed to provide the actual operating expenses per well for the more than 150 gas wells under protest. Antero has simply provided the arithmetic average of its statewide expenses allocated to gas wells.

AFFIRMATIVE DEFENSE NUMBER 3

37. The applicable legislative rule states:

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

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

WHEREFORE, State Tax Commissioner and the Honorable David Sponaugle, Assessor

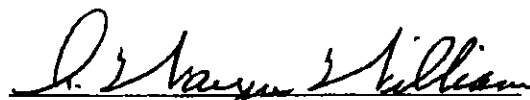
of Doddridge County, pray the Honorable Court DISMISS the Complaint with prejudice and for such additional relief as the Court deems just and proper.

Respectfully submitted,

DALE W. STEAGER,
STATE TAX COMMISSIONER
OF WEST VIRGINIA, HONORABLE
DAVID SPONAUGLE, ASSESSOR OF
DODDRIDGE COUNTY

By counsel,

PATRICK MORRISEY
ATTORNEY GENERAL


L. WAYNE WILLIAMS (WVSB# 4370)
ASSISTANT ATTORNEY GENERAL
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, West Virginia 25305
304-558-2522

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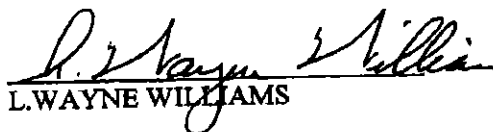
Respondents.

CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General, do hereby certify that the foregoing
"Answer of West Virginia State Tax Department and Assessor David Sponaugle to Complaint"
was served upon the following by depositing a copy of the same in the United States Mail, via
first-class postage prepaid, this 14th day of February, 2017, addressed as follows:

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

County Commission of Doddridge County
118 E Court Street, Room 102
West Union, WV 26456


L.WAYNE WILLIAMS