

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. 17-AA-1

**THE HONORABLE DALE W. STEAGER¹,
West Virginia State Tax Commissioner,
THE HONORABLE ARLENE MOSSOR,
Assessor of Ritchie County, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,**

Respondents.

**ANSWER OF
WEST VIRGINIA STATE TAX DEPARTMENT AND
HONORABLE ASSESSOR ARLENE MOSSOR TO COMPLAINT**

COME NOW Dale W. Steager, State Tax Commissioner of the State of West Virginia and the Honorable Arlene Mossor, Assessor of Ritchie County, (hereinafter, collectively referred to as "Tax Commissioner" or "Tax Department"), by counsel, in order to Answer the *Complaint of Petitioner* filed in this matter and states as follows. The *Complaint of Petitioner* (hereinafter, *Complaint*) was filed with the Circuit Court of Ritchie County on or about January 10, 2017. The *Complaint* was served on Assessor Mossor on or around January 10, 2017. A *Notice of Bona Fide Defense* was filed on behalf of the Assessor Mossor on January 30, 2017, therefore, extending the deadline to file an answer to February 10, 2017. The *Complaint* was served on the Tax Department on or about January 17, 2017.

¹ On January 16, 2017, Governor Justice appointed Dale W. Steager, Esquire, to be the WV State Tax Commissioner. Tax Commissioner Steager is substituted as party in place of the previous Tax Commissioner, Mark W. Matkovich, pursuant to Rule 25(d) of the West Virginia Rules of Civil Procedure.

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 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 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 lacks sufficient information to determine the truth or falsity of the 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 2016 TY is based on the 2014 CY income data as alleged in the last sentence of Paragraph 4 of the *Complaint*. The Tax Department denies that Antero submitted **actual operating expenses per well** for the gas wells under protest as alleged in Paragraph 4 of the *Complaint*. The Tax Department denies the remaining allegations set forth in second sentence of 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. The Tax Department further denies that it has valued Antero's operating gas wells erroneously in any manner under the laws of this State as alleged in Paragraph 5 of the *Complaint*.

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 allegations set forth in sentences 2, 3, and 4 of Paragraph 6 of the *Complaint*. The Tax Department denies that Antero submitted actual operating expenses per well for the gas wells under protest as alleged in Paragraph 6 of the *Complaint*. 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 to support its protest, that Antero provided actual operating expenses for each well, that the Tax Department's valuation is wrong in any manner, and further 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 Ritchie County was filed timely; consequently, that allegation is denied. The Tax Department denies that Antero submitted actual operating expenses per well for the gas wells under protest as alleged in Paragraph 8 of the *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 Antero provided actual operating expenses for each of the gas wells being challenged in Ritchie County as alleged in sentence 1 of Paragraph 11 of the *Complaint*. The Tax Department lacks sufficient information to admit or deny the truthfulness of the allegations set forth in sentence 2 of Paragraph 11 of the *Complaint*; consequently, those allegations are denied. 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 11 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 11 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 sentence 3 of Paragraph 11 of the *Complaint*.

12. Paragraph 12 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.

13. 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 13 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 sentence 2 of Paragraph 13 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 gas wells being challenged in Ritchie County as alleged in the last sentence of Paragraph 13 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 13 of the *Complaint*.

14. The Tax Department states that the proper expense deductions for valuing operating oil and gas wells are set forth in the administrative notices and other supporting documentation issued by the Tax Department as alleged in Paragraph 14 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 that Antero has proven that the actual operating expenses for each of the gas wells being challenged in Ritchie County is \$648,000 as alleged in the second sentence of Paragraph 14 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 14 of the *Complaint*. The Tax Department admits the allegations set forth in the fourth and fifth sentences of Paragraph 14 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 14 of the *Complaint*.

15. The Tax Department admits the allegations set forth in Paragraph 15 of the *Complaint*.

16. 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 16. 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 16.

17. 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 17 of the *Complaint*. The Tax Department admits that charts and documentation were admitted into the record as Petitioner's Exhibits 3, 4, 5, 6, 7, 8, 9, and 10 at the Board of assessment Appeals

as alleged in Paragraph 17 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 17 of the *Complaint*.

18. 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 18 of the *Complaint*. The Tax Department denies that Antero has submitted the actual operating expenses for each of the gas wells being challenged in Ritchie County as alleged Paragraph 18 of the *Complaint*. 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*. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth in sentence 4 of Paragraph 18 of the *Complaint*; consequently, those allegations are denied. The Tax Department denies the remaining allegations set forth in Paragraph 18 of the *Complaint*.

19. The Tax Department admits the allegations set forth in the first two sentences of Paragraph 19 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 19; 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 admits the allegations set forth in the fourth sentence of Paragraph 19 of the *Complaint*.

20. The Tax Department admits that Altus proposed "an alternate approach" to valuing Antero's gas wells in Ritchie County as alleged in Paragraph 20 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 20 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 20 of the *Complaint*.

21. The Tax Department admits the allegations set forth sentences 1 & 2 of Paragraph 21 of the *Complaint*. The Tax Department lacks sufficient information to form an opinion with regards to the truth or falsity of the allegations in the sentences 3 & 4 of Paragraph 21 of the *Complaint*; consequently, those allegations are denied.

22. 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 Ritchie County as alleged in Paragraph 22 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 22; consequently, those allegations are denied.

23. Paragraph 23 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.

24. Paragraph 24 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.

25. Paragraph 25 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.

26. The Tax Department denies the allegations set forth in the first sentence of Paragraph 26 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 26. The remaining allegations set forth in Paragraph 25 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.

27. Paragraph 27 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.

28. The Tax Department denies the allegations set forth in the first sentence of Paragraph 28 of the *Complaint*. The remainder of Paragraph 28 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.

29. The Tax Department denies that it has discretion to select the appraisal methodology for operating oil and natural gas wells as alleged in Paragraph 29 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.

30. The Tax Department denies the allegations set forth in Paragraph 30 of the *Complaint*.

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

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

AFFIRMATIVE DEFENSE NUMBER 1

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

AFFIRMATIVE DEFENSE NUMBER 2

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

AFFIRMATIVE DEFENSE NUMBER 3

34. 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.

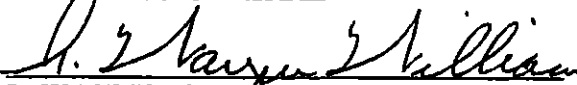
WHEREFORE, State Tax Commissioner and the Honorable Arlene Mossor, Assessor of Ritchie County, pray the Honorable Court DISMISS the Complaint with prejudice and for such additional relief as the Court deems just and proper.

Respectfully submitted,

DALE W. STEAGER,
STATE TAX COMMISSIONER
OF WEST VIRGINIA, HONORABLE
ARLENE MOSSOR, ASSESSOR OF
RITCHIE COUNTY

By counsel,

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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 Arlene Mossor 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 6th day of February, 2017, addressed as follows:

Craig A. Griffith, Esq.
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L. WAYNE WILLIAMS