IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,

Petitioner,

v.

Civil Action No. ~~17-AA-~~ 17-C-98-2
The Honorable Bedell

THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,

THE HONORABLE JOSEPH R. ROMANO,
Assessor of Harrison County, and

THE COUNTY COMMISSION OF HARRISON COUNTY,
Sitting as a Board of Assessment Appeals and as a
Board of Equalization and Review,

Respondents.

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COMPLAINT OF PETITIONER ANTERO RESOURCES CORPORATION

I. INTRODUCTION

Antero Resources Corporation ("Antero") is a producer of natural gas throughout the state of West Virginia, with 168[1] Marcellus wells located in Harrison County.[2]

Each year, those wells are appraised by the West Virginia Department of Revenue, State Tax Department, Property Tax Division (the "Tax Department" or "State") based on a mass appraisal system, state-wide. Certain variables are used by the State to value producing oil and

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[1] Antero had 169 wells located in Harrison County for tax year 2016.

[2] The appeals for tax years 2016 and 2017 pertain solely to horizontal Marcellus wells. Any reference to the term "Marcellus" in this complaint refers to horizontal Marcellus wells.

natural gas wells, including, notably for this complaint, operating expenses. Specifically, the Tax Department periodically circulates a survey by which it solicits data from oil and natural gas producing taxpayers regarding operating expenses for their wells, and based on that, the Tax Department determines the operating expense variables used in its mass appraisal system. The amount of operating expenses applied to a well using the mass appraisal system is based on a percentage of the well's gross receipts not to exceed a maximum amount, and the percentage and maximum vary by the type of well (typical or conventional, Marcellus, etc.). The operating expense calculations are included in a natural resources "valuation variables" document that the Tax Department releases annually.

In addition to the valuation variables document, the Tax Department releases an annual administrative notice that lists the percentages and maximum amounts for operating expense calculations. In prior years, the Tax Department invited taxpayers to submit actual operating expenses that exceed the percentages and maximum amounts listed in the valuation variables document. The 2016 and 2017 administrative notices, unlike administrative notices from 2000 through 2015, however, did not include language that invites taxpayers to submit actual expenses, despite no changes to the West Virginia Code or the Tax Department's Legislative Rule that governs the valuation of producing natural gas wells. The 2016 administrative notice was released several months *after* Antero had already submitted actual operating expenses to the Tax Department, consistent with the procedure from prior years.

Antero evaluated its actual operating expenses for calendar years 2014 and 2015, and determined that for Marcellus wells in the county, the amount of operating expenses that it was incurring significantly exceeded the percentages and maximum amounts set by the State. For property tax purposes, the operating expense data from calendar year 2014 is used to value the wells for tax year 2016, and operating expense data from calendar year 2015 is used to value the wells for tax year 2017.

When the Tax Department valued Antero's gas well values for tax years 2016 and 2017, it failed to adhere to its own regulations that direct how it is to consider actual operating expenses. Antero, like many mineral producers, generally reports its operating expenses to the Tax Department on a state-wide basis. For 2014, Antero's average operating expense for all well types was approximately 23% of revenue, or $648,000, which includes all operating expenses, gathering and compression expenses, processing expenses, and transportation expenses necessary to get the gas to the point of sale. For 2015, Antero's average operating expense per Marcellus well was 36% of revenue, or $817,000.[3] Antero reports its gross receipts based on the point of sale, and the allowed operating expenses should reflect the expenses incurred to get the gas to the point of sale. The goal of the State's calculation is to determine the value of the reserves. Under the current system, if two producers have the same production/reserves but one sells at the wellhead and the other sells to a market further away, the reserves of the producer who sells to a further market are valued substantially higher, which undermines the goal of the State's calculation. Gas price also plays a major role in the State's valuation calculation, and the difference in expense as a percentage of revenue from 2014 to 2015 was a result of a precipitous

[3] Testimony during the October 2016 hearing focused on average expenses for all well types. Antero's per well cost for horizontal Marcellus wells in calendar year 2014 was $1,061,000 per well. At the February 2017 hearing, it was noted that per well costs for horizontal Marcellus wells was $817,000 for calendar year 2015, while the overall per well cost was $544,000 per well. The overall well costs of $648,000 per well in 2014 and $544,000 per well in 2015 includes horizontal Marcellus wells, vertical Marcellus wells and conventional wells.

drop in gas prices from 2014 to 2015. Operating expenses do not fluctuate as a result of the price of gas, yet the State's model presumes this to be the case.

For tax year 2016, the Tax Department calculated operating expenses at the lesser of 20% of gross receipts or $150,000 for Marcellus wells. For tax year 2017, the Tax Department calculated operating expenses at the lesser of 20% of gross receipts or $175,000 for Marcellus wells. These caps[4] unduly restrict the amount of operating expenses that should be allowed for each well, and the imposition of a "cap" is not supported by the Tax Department's legislative rule regarding the valuation of producing oil and natural gas properties. The legislative rule, instead, requires that the Tax Department use "average annual industry operating expenses per well" in valuing producing wells, and does not authorize the Tax Department to "cap" operating expenses at a certain amount. In sum, the Tax Department incorrectly and unfairly ignored the actual operating expenses and instead relied on the maximum calculations found in its valuation variables documents and administrative notices. By failing to consider Antero's actual operating expenses, the Tax Department overvalued Antero's wells and did not assess them at their true and actual value.

On October 27, 2016, Antero protested the Tax Department's 2016 valuation (as adopted by the Harrison County Assessor) to the Harrison County Commission sitting as the Harrison County Board of Assessment Appeals. On February 3, 2017, Antero protested the Tax Department's 2017 valuation (as adopted by the Harrison County Assessor) to the Harrison

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[4] The "maximum amount" ($150,000 for 2016 and $175,000 for 2017) of operating expenses per Marcellus well will be referred to alternatively throughout this complaint as the "maximum amount" or "cap."

County Commission sitting as the Harrison County Board of Equalization and Review.[5] At both hearings, Antero presented clear and convincing evidence that the Tax Department failed to consider Antero's actual operating expenses in determining the valuation for the wells assessed for Harrison County. Antero presented a complete analysis of its actual operating expenses from the state and local tax firm Altus Group US, Inc. ("Altus"), supported by testimony from an Altus Senior Consultant, Kirsten Evans, that correctly applies the approach to arrive at allowable operating expenses. Antero also proved by clear and convincing evidence that the State erroneously calculated average operating expenses. Antero demonstrated that it is the largest producer in West Virginia, at 40% of market share, and that its actual operating expenses per Marcellus well were $1,061,000 for 2014 and $817,000 for 2015. Under these circumstances, it is not mathematically possible for the average operating expenses for Marcellus wells to be $150,000 or $175,000. The Boards, however, made no adjustments to the Tax Department's valuation for tax year 2016 or 2017.

Antero timely petitions this Court for appeal of the Boards' decisions with respect to the valuation of its Harrison County wells for tax years 2016 and 2017. As explained below, the Tax Department abused its discretion by failing to consider Antero's actual and allowable operating expenses in a manner contrary to the statutes, regulations and official releases from the Tax Department governing valuation of personal property. Moreover, the Tax Department failed to support its valuations with substantial evidence. Antero, on the other hand, presented clear and

[5] The Harrison County Board of Assessment Appeals and Board of Equalization and Review are collectively referred to in this complaint as the "Boards."

convincing evidence for its allowable operating expenses to be used in valuing its wells for tax years 2016 and 2017.

II. FACTUAL BACKGROUND

A. Antero's Property.

Antero owned 168 Marcellus wells in Harrison County for tax year 2017, and pays significant taxes to Harrison County for those wells. For tax year 2016, Antero owned 169 Marcellus wells in Harrison County.

B. Antero's Operating Expenses.

Antero completed the Tax Department's survey related to operating expenses. (Certified Transcript of October 27, 2016 Hearing before the Harrison County Board of Assessment Appeals, Attached as Exhibit A, pp. 138:21-140:3 (hereinafter "2016 Hr'g Tr."); Certified Transcript of February 3, 2017 Hearing before the Harrison County Board of Equalization and Review, Attached as Exhibit B, Hr'g Tr. Exh. 6, (hereinafter "2017 Hr'g Tr."). Phil Yoo of Antero testified, however, that the survey asked for expenses related to lifting the gas out of the ground only, not gathering and compression, transportation, or processing costs, which are necessary to get the gas to the market. (2016 Hr'g Tr. at pp. 138:21-140:6; 2017 Hr'g Tr. at pp. 77:3-78:15). The Tax Department's survey information for horizontal Marcellus wells pertained almost solely to typical lease operating expenses and was based on prior surveys used for conventional wells. No line items were included for gathering and compression, processing or transportation. (2016 Hr'g Tr. at pp. 138:21-140:6; 2017 Hr'g Tr. at pp. 77:3-78:15, *see also* 2017 Hr'g Tr. Exh. 6). If such expense categories had been included in the survey, Antero would have calculated and listed those substantial expenses, and the Tax Department's calculations would have been substantially different, given that Antero is the largest producer for Marcellus wells in West Virginia and represents approximately 40% of the Marcellus well production statewide. (2016 Hr'g Tr. at pp. 138:21-140:6, 72:12-73:20, 2016 Hr'g Exh. 16; 2017 Hr'g Tr. at pp. 52:18-53:12, 2017 Hr'g Exh. 11). Altus demonstrated that it would be mathematically impossible to get a weighted average of $150,000 for tax year 2016 or $175,000 for tax year 2017 in operating expenses for Marcellus wells if Antero's average operating expense per Marcellus well is taken into consideration. (2016 Hr'g Tr. at pp. 72:12-73:20, 2016 Hr'g Exh. 16; 2017 Hr'g Tr. at pp. 52:18-53:12, 2017 Hr'g Exh. 11). Accordingly, the State's maximum amounts for operating expenses do not truly represent the average operating expenses for Marcellus wells, as shown by the market share that Antero holds and its operating expenses of $1,061,;000 per Marcellus well in 2014, and $817,000 per Marcellus well in 2015.

For the 2017 tax year, the Tax Department increased the allowed operating expenses cap from $150,000 to $175,000 based on public comments received in 2016. The State's calculation remains erroneous, however, because it relies on data from the faulty 2014 survey, and because the State disregarded the operating expenses of Antero (the largest operator in the State) in calculating the new "average" operating expense.[6] Furthermore, the 20% average annual industry operating expense percentage was calculated based on calendar year 2013 revenue information, when the price of natural gas was approximately $4/MmBTU, while the price of gas for calendar year 2015 had fallen to approximately $2.25/MmBTU. This results in the Tax

[6] At the 2017 hearing, the State testified that Antero's operating expenses were thrown out because Antero asserted that it did not include all operating expenses in its survey response. (2017 Hr'g Tr. at pp. 99:8-99:11).

Department allowing less operating expenses for certain wells, despite the fact that the volume from that well may have remained stable. (2017 Hr'g Tr. at pp. 27:10-28-28)

Furthermore, the Tax Department does not attempt to differentiate between different business models in its survey, administrative notices, or the legislative rule. As a result, certain producers are penalized through an understated amount of operating expenses. As required by the State Tax Department, Antero reports its gross receipts based on the point of sale, and the allowed operating expenses should reflect the expenses incurred to get the gas to the point of sale. Requiring gross receipts to be reported based on the point of sale, while not recognizing the substantial expenses incurred to get the gas to the point of sale, results in overvaluation of the produced natural gas.

Antero submitted proof of its actual operating expenses for 2014 and 2015 to the Tax Department and the Boards for consideration for tax years 2016 and 2017. (*See* 2016 Hr'g Exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, 16; 2017 Hr'g Exhibits 2, 3, 4, 5, 7, 11, 12, 13, 14, 15). Antero's average operating costs for all well types in 2014 was approximately 23% of gross receipts, or $648,000. (2016 Hr'g Tr. at pp. 48:20-48:22, 60:20-61:5). Antero's average operating costs for Marcellus wells in 2015 was approximately 36% of gross receipts, or $817,000.[7] (2017 Hr'g Tr. at p. 22:15-22:21).[8] Ultimately, neither the Tax Department nor the

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[7] The difference in Antero's average operating expense percentage per Marcellus well from calendar year 2014 to calendar year 2015 was the result of a roughly 55% decline in gas prices, and not based on Antero incurring increased expenses in calendar year 2015 or otherwise changing its operations. (2017 Hr'g Tr. at pp. 49:9-50:3)

[8] *See* footnote 3 and 2017 Hr'g Tr. at pp. 39:18-40:3 for a discussion of average operating costs for all well types and average operating costs for horizontal Marcellus wells.

Boards adjusted the operating expenses used to value Antero's wells in Harrison County for 2016 or 2017.

C. The Tax Department's Calculation of Antero's Operating Expenses.

The Tax Department prepares annual natural resource property valuation variables for appraising oil and gas. Further, the Tax Department makes determination of those valuation variables pursuant to Series 1J of Title 110, a legislative rule of the Tax Department, promulgated pursuant to W. Va. Code §§ 11-1C-5(b), 11-1C-5a, and 11-1C-10(d). In order to determine the amount of Antero's operating expenses, and, in turn, the value of Antero's oil and gas wells, the Tax Department further is governed by Administrative Notices.

In the past, the Tax Department included a statement in its Administrative Notices indicating that it was willing to consider actual operating expenses if a taxpayer thought that the value of their wells was overstated. (2016 Hr'g Tr. at pp. 26:5-26:20, 96:1-97:10, 113:17-113:20; 2017 Hr'g Tr. at pp. 30:15-32:11). In 2016, the Tax Department decided that it would no longer consider actual operating expenses, despite no change in the law. (2016 Hr'g Tr. at pp. 26:5-26:20, 96:1-97:10, 113:17-113:20; 2017 Hr'g Tr. at pp. 30:15-32:11). The tax year 2016 administrative notice was released by the Tax Department several months *after* Antero had already submitted actual operating expenses to the Tax Department, consistent with the procedure from prior years. (2016 Hr'g Tr. at pp. 96:13-97:3)

For tax year 2016, the State calculated the allowed operating expenses at the lesser of 20% of gross receipts, or $150,000, for Marcellus wells. (2016 Hr'g Tr. at p. 62:12-62:15). For tax year 2017, the State calculated the allowed operating expenses at the lesser of 20% of gross receipts, or $175,000, for Marcellus Wells. (2017 Hr'g Tr. at p. 26:15-26:17). Antero's operating expenses for Marcellus wells were on average $1,061,000 in 2014 and $817,000 in 2015. Due to the State's failure to take into account Antero's actual operating expenses, the value of Antero's wells is significantly overstated. For 2016, the State valued Antero's wells in Harrison County at $691 million, whereas Antero, using the State's mass appraisal model and Antero's actual operating expenses, appraised them at $458 million. (2016 Hr'g Tr. Exh. 1; Hr'g Tr. at pp. 74:3-76:8). For 2017, the State valued Antero's wells in Harrison County at $343 million, whereas Antero, using the State's mass appraisal model and Antero's actual operating expenses, appraised them at $197.7 million. (2017 Hr'g Tr. Exh. 1, 2017 Hr'g Tr. at pp. 53:13-54:9). Antero also hired Hein & Associates to appraise the true and actual value of the wells for tax years 2016 and 2017. Hein & Associates appraised the wells at $596.6 million for tax year 2016 and $247 million for tax year 2017. (*See* 2016 Hr'g Tr. Exh. 11; 2016 Hr'g Tr. at pp. 123:23-123:24; 2017 Hr'g Tr. Exh. 13).

Antero timely noticed the Harrison County Commission with its notices of protest for tax years 2016 and 2017. (2016 Hr'g Tr. Exh. 1; 2017 Hr'g Tr. Exh. 1). The Harrison County Commission, sitting as the Harrison County Board of Assessment Appeals, held a hearing with respect to Antero's 2016 tax assessment on October 27, 2016. The Harrison County Commission, sitting as the Harrison County Board of Equalization and Review, held a hearing with respect to Antero's 2017 tax assessment on February 3, 2017.

At the hearings, the Tax Department offered no credible evidence as the basis for its refusal to accept Antero's calculation of its operating expenses, except to argue that the State's current procedures are in accordance with the legislative rules and the law, and that the Tax Department did not have enough data to support Antero's actual operating expenses, despite the abundance of documentation Antero provided. (2016 Hr'g Tr. at pp. 145-176; 2017 Hr'g Tr. at pp. 88-99).

D. Antero's Expert Analysis and Testimony.

At the hearings, Antero's expert, Altus, a leading independent state and local tax firm, by Director Kirsten Evans, testified before the Boards, and showed that a correct application of the allowable operating expenses demonstrated that the Tax Department had erred by failing to allow the operating expenses documented by Antero. (*See* 2016 Hr'g Tr., pp. 31-116; 2017 Hr'g Tr., pp. 17-76). Detailed charts and documentation of actual operating expenses, with numbers specific to Harrison County, were submitted to the Boards. (*See* 2016 Hr'g Exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, 16; 2017 Hr'g Exhibits 2, 3, 4, 5, 7, 11, 12, 13, 14, 15).

Altus also explained that by artificially capping operating expenses at $150,000 for 2016 and $175,000 for 2017, which is not permitted by the legislative rule, the State is grossly overvaluing the fair market value of Antero's wells. (2016 Hr'g Tr., at pp. 38:15-40:2; 2017 Hr'g Tr. at pp. 26:11-29:18). Additionally, the State does not take into account Antero's point-of-sale and the operating expenses incurred to get the gas downstream to market. (2016 Hr'g Tr. at pp. 29:8-32:19; 2017 Hr'g Tr. at pp. 32:21-39:3). Altus testified that Antero volumetrically represents 40% of horizontal Marcellus production in West Virginia, and demonstrated that it would be mathematically impossible to get a weighted average of $150,000 for tax year 2016, or $175,000 for tax year 2017, in operating expenses for Marcellus wells if Antero's average operating expense per well are taken into consideration. (2016 Hr'g Tr. at pp. 72:12-73:20; 2017 Hr'g Tr. at pp. 52:18-53:12).

At the 2016 hearing, James Harden, an expert appraiser from Hein & Associates, also testified. He explained that Antero hired Hein & Associates to appraise the fair market value of its wells in Harrison County. (2016 Hr'g Tr., at p. 116:17-116:22). Mr. Harden explained that the Tax Department's valuation did not properly account for the decline rate or actual operating costs of the wells at issue, and that Hein & Associates used a different discount rate than the State. (2016 Hr'g Tr., at pp. 118:20-123:10). Hein & Associates appraised the fair market value of Antero's Harrison County wells at $596.6 million for tax year 2016, while the state valued the wells at $691 million for tax year 2016. (2016 Hr'g Tr. at p. 123:23-123:24).

Hein & Associates did not testify at the 2017 hearing. However, Ms. Evans of Altus testified that Antero hired Hein & Associates to appraise its wells in Harrison County for the 2017 tax year. (*See* 2017 Hr'g Tr., at pp. 54:10-56:9; 2017 Hr'g Tr. Exh. 13). Hein & Associates appraised the fair market value of Antero's Harrison County wells at $247.1 million, while the State valued them at $343 million. (*See* 2017 Hr'g Tr. Exhs. 1, 13).

Finally, at both hearings, Altus testified that, while Hein & Associates' valuation is the fair market value of the wells, an alternative approach would be to calculate operating costs as 20% of gross production, without any cap. Altus stressed that this method would still overstate the fair market value of the wells, but that 20%, without a cap, is a reasonable resolution. (2016 Hr'g Tr., at pp. 133:18-134:20, 2016 Hr'g Tr. Exh. 15; 2017 Hr'g Tr., at pp. 56:10-57:6, 2017Hr'g Tr. Exh. 12). This approach would value Antero's wells at approximately $587 million for 2016 and $299.6 million for 2017. (2016 Hr'g Tr. Exh. 15; 2017 Hr'g Tr. Exh. 12).

E. Antero's Protest to the Harrison County Board of Assessment Appeals for Tax Year 2016.

On February 10, 2016, Antero submitted to the Harrison County Assessor and the Harrison County Commission sitting as the Board of Assessment Appeals an Application for Review of Property Assessment with regard to its gas wells for tax year 2016, and Antero appeared on October 27, 2016, by counsel, before the Board. (*See* W. Va. Code § 11-3-24). Antero hired a third-party court reporter to produce a certified transcript of the hearing at which it presented the evidence discussed above. Exhibits introduced at the hearing and provided to the Board will be transmitted to the Court within thirty (30) days, as provided by West Virginia Code § 11-3-25. The original transcript of the proceeding was attached to Antero's Petition as Exhibit **A**. (*See* W. Va. Code § 58-3-4.)

By March 15, 2017 Order, the Board determined to make no adjustment to the State Tax Department's valuation of Antero's gas wells for the 2016 tax year. (*See* Ex. **C** to Antero's Petition). Antero timely petitions this Court for relief from the Board's erroneous determination within thirty (30) days of receiving of the Order. (*See* W. Va. Code § 11-3-25).

F. Antero's Protest to the Harrison County Board of Equalization and Review for Tax Year 2017.

On January 19, 2017, Antero submitted to the Harrison County Assessor and the Harrison County Commission sitting as the Board of Equalization and Review an Application for Review of Property Assessment with regard to its gas wells for tax year 2017, and Antero appeared on February 3, 2017, by counsel, before the Board. (*See* W. Va. Code § 11-3-24). Antero hired a third-party court reporter to produce a certified transcript of the hearing at which it presented the evidence discussed above. Exhibits introduced at the hearing and provided to the Board will be transmitted to the Court within thirty (30) days, as provided by West Virginia Code § 11-3-25.

The original transcript of the proceeding was attached to Antero's Petition as Exhibit **B**. (*See* W. Va. Code § 58-3-4.)

By March 3, 2017 Order, the Board determined to make no adjustment to the State Tax Department's valuation of Antero's gas wells for the 2017 tax year. (*See* Ex. **D** to Antero's Petition). Antero timely petitions this Court for relief from the Board's erroneous determination within thirty (30) days of the adjournment of the Board. (*See* W. Va. Code § 11-3-25).

III. ANALYSIS

A. Applicable Legal Standards.

All property in the State of West Virginia is required to "be assessed annually at its true and actual value . . . ." W. Va. Code § 11-3-1. The West Virginia State Tax Commissioner[9] is charged with determining "the fair market value of all natural resource property in the State" and then providing the values to county assessors to use in assessing the property. W. Va. Code § 11-1C-10(d).

Pursuant to this responsibility to value producing mineral property and reserves, the Tax Commissioner promulgated Title 110, Series 1J of the West Virginia Code of State Rules, which explains the mechanisms to be utilized in valuing taxable property.

To determine the fair market value of producing oil and natural gas property, the Tax Department applies "a yield capitalization model to the net receipts (gross receipts less royalties paid less operating expenses) for the working interest. . . ." W. Va. Code R. § 110-1J-4.1. The methodology set forth in § 110-1J-4.1 is reflected in Tax Department's 2016 and 2017

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9 Elsewhere in this complaint, the Tax Commissioner is variously referred to as the Tax Department or simply the State. All terms refer to the same entity.

Administrative Notices, in which the Tax Commissioner states that the Tax Department primarily relies upon the income approach in valuing producing oil and gas property.

The Tax Department should consider actual operating expenses to offset the presumed valuation of expenses for each well. According to the Tax Department's legislative rule, the Tax Commissioner considers "operating expenses" to be "the "ordinary expenses which are directly related to the maintenance of production of natural gas and/or oil. These expenses do not include extraordinary expenses, depreciation, ad valorem taxes, capital expenditures, or expenditures relating to vehicles or other tangible personal property not permanently used in the production of natural gas or oil." Section 3.16 of Series 1J, Title 110 State Tax Department Legislative Rule for Valuation of Producing and Reserve Oil & Natural Gas for Ad Valorem Property Tax Purposes. Based on the testimony of Antero's expert, Altus, the report of Hein & Associates, and the documents submitted to the Tax Department and the Boards, the operating expenses submitted by Antero are those contemplated in Section 3.16.

Antero's burden before the Boards was to show by clear and convincing evidence that the Tax Department's valuation (and, hence, the County's assessment) of its gas well operating expenses was erroneous. Syl. pts. 5-6, *Stone Brooke*, 224 W. Va. 691, 688 S.E.2d 300. On appeal to this Court, the Court relies on the record developed before the Boards and determines whether the challenged property valuation is supported by substantial evidence.[10] *See* W. Va. Code § 58-3-4; syl. pts. 1-2, *Stone Brooke*, 224 W. Va. 691, 688 S.E.2d 300.

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[10] Furthermore, "[p]ursuant to *In Re Pocahontas Land Co.*, 172 W. Va. 53, 61, 303 S.E.2d 691, 699 (1983), once a taxpayer makes a showing that tax appraisals are erroneous, the Assessor is then bound by law to rebut the taxpayer's evidence." *Mountain Am., LLC v. Huffman*, 224 W. Va. 669, 786 n.23, 687

In this case, the Tax Department failed to apply the demonstrated actual operating expenses supplied by Antero in both informal and formal testimony. Accordingly, Antero now petitions this Court to find (1) that the Board incorrectly made no changes to the Tax Department's valuation, (2) that the State's "cap" ($150,000 for 2016 and $175,000 for 2017) in operating expenses be removed, and (3) that the value of Antero's Harrison County gas wells be set at $587 million for the 2016 tax year and $299.6 million for the 2017 tax year, based on the compromise value calculated by applying the State's 20% average annual industry operating expense percentage for Marcellus wells to Antero's gross receipts.[11]

B. The Tax Department Failed to Consider the Actual Operating Expenses of Antero's Gas Wells and, Thus, Failed to Correctly Value that Property; Antero, on the Other Hand, Introduced Clear Evidence of the Allowable Operating Expenses.

While the State Tax Department has discretion to select the appraisal method that it determines should provide the most accurate valuation of personal property, once it chooses a method, it must correctly apply the method.

For Antero's Marcellus wells in Harrison County, the Tax Department has not followed its own rules regarding average industry operating expenses, as set forth in Antero's Exhibits and expert testimony at the hearings before the Board of Assessment Appeals on October 27, 2016, and before the Board of Equalization and Review on February 3, 2017, and the Tax Department has, therefore, failed to properly calculate the fair market value of Antero's Marcellus wells for

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S.E.2d 768, 785 n.23 (2009). While the Court in *In Re Pocahontas Land Co.* suggested that a county assessor could meet that burden by introducing the State Tax Department's valuation, in this case, Antero showed that the State Tax Department's valuation itself is incorrect, so it was incumbent on the State Tax Department to rebut Antero's evidence.

[11] Antero asserts, however, that in order to calculate the fair market value of the Marcellus wells, as is required of the Tax Commissioner under W. Va. Code § 11-1C-10(d), actual operating expenses must be considered.

tax years 2016 and 2017. It is also improper for the Tax Department to place a cap on operating expenses, another factor resulting in an inflated value for Antero's Marcellus wells. As demonstrated at the hearings, the survey used by the Tax Department to calculate average industry operating expenses for Marcellus wells was poorly drafted and misleading and resulted in the Tax Department calculating an operating expense "cap" well below the amount of operating expenses actually required to operate a Marcellus well. Antero avers that not only is a "cap" not supported by law, but that the Tax Department also calculated a wildly inaccurate "cap."

Additionally, by calculating the allowed operating expenses at the lesser of 20% of gross receipts or $150,000 for tax year 2016, and 20% of gross receipts or $175,000 for tax year 2017, the Tax Department treats similarly situated tax payers differently in violation of United States Constitution and the West Virginia Constitution, as the "caps" only adversely affect tax payers that have wells with gross receipts over a certain threshold.

Finally, the Tax Department's valuation of Antero's wells does not properly account for the decline rate or discount rate. As a result, Antero's wells were overvalued.

IV. CONCLUSION

WHEREFORE, Antero Resources Corporation respectfully requests that the Court:

(i) Find that the Harrison County Board of Assessment Appeals incorrectly upheld the valuation of Antero's Harrison County gas wells by the West Virginia Department of Revenue, State Tax Department, Property Tax Division for the 2016 tax year;

(ii) Find that the Harrison County Board of Equalization and Review incorrectly upheld the valuation of Antero's Harrison County gas wells by the West Virginia Department of Revenue, State Tax Department, Property Tax Division for the 2017 tax year;

(iii) Fix the value of Antero's Harrison County gas wells for the 2016 tax year at $587 million, based on the compromise value calculated by applying the State's 20% average annual industry operating expense percentage for Marcellus wells to Antero's gross receipts;

(iv) Fix the value of Antero's Harrison County Marcellus gas wells for the 2017 tax year at $299.6 million, based on the compromise value calculated by applying the State's 20% average annual industry operating expense percentage for Marcellus wells to Antero's gross receipts; and

(v) Order such other relief as the Court deems appropriate.

ANTERO RESOURCES CORPORATION,

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