

IN THE CIRCUIT COURT OF BARBOUR COUNTY, WEST VIRGINIA

CNX GAS COMPANY, LLC,

Petitioner,

v.

Civil Action No. 16-AA-4

THE HONORABLE MARK W. MATKOVICH,  
State Tax Commissioner,  
THE HONORABLE JOHN M. CUTRIGHT,  
Assessor of Barbour County,  
THE COUNTY COMMISSION OF BARBOUR COUNTY,

Respondents.

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ANSWER OF  
WEST VIRGINIA STATE TAX DEPARTMENT  
TO COMPLAINT

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COMES NOW Mark W. Matkovich, State Tax Commissioner of the State of West Virginia and the Honorable John Cutright, Assessor of Barbour 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 Barbour County on or about November 23, 2016 and served on the Tax Department on or about November 30, 2016.

**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 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 CNX Gas; furthermore, CNX Gas has failed to cite any statutory authority for the use of statewide CNX's allocated operating expenses for individual taxpayers as demanded by the Taxpayer. The Tax Department denies that CNX submitted actual operating expenses per well for review and consideration as alleged in sentence 3 of Paragraph 3; the Tax Department states that CNX submitted allocated expenses in prior years contrary to the allegations set forth in sentence 3 of

Paragraph 3. 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 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 that CNX submitted actual operating expenses per well for review and consideration as alleged in sentence 5 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 CNX Gas 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 Paragraph 4 of the *Complaint* regarding the basis on which CNX Gas calculated operating expenses; consequently, those allegations are denied.

5. The Tax Department admits that Administrative Notice 2016-08 established the direct ordinary operating expenses for the various types of oil and gas wells as alleged in Paragraph 5 of the *Complaint*. The Tax Department further states that direct ordinary operating expenses are set forth with particularity in Administrative Notice 2016-08. The Tax Department denies that CNX Gas provided actual operating expenses per well as alleged in Paragraph 5 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 5.

6. The Tax Department admits that CNX Gas 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 6 of the *Complaint*. However, the Tax Department denies that CNX presented clear and convincing evidence to support its protest, also that CNX provided actual operating expenses for each well, and the remaining allegations set forth in Paragraph 6 of the *Complaint*.

7. The Tax Department lacks sufficient information to determine whether the appeal before the Circuit Court of Barbour County was filed timely; consequently, that allegation is denied. The Tax Department denies the remaining allegations set forth in Paragraph 7 of the *Complaint*.

8. The Tax Department admits the allegations set forth in Paragraph 8 of the *Complaint*.

9. The Tax Department lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 9 of the *Complaint*; consequently, those allegations are denied. The Tax Department denies that CNX's "average operating costs" represent the actual operating expenses per well—actual operating expenses for each well under protest—as alleged in Paragraph 9 of the *Complaint*.

10. Paragraph 10 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.

11. 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 10 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 10 of the *Complaint*; the Tax Department demands strict proof thereof. The Tax Department further denies that CNX submitted actual operating expenses per well as alleged in Paragraph 10 of the *Complaint*.

12. The Tax Department admits the allegations set forth in the first sentence of Paragraph 12 of the *Complaint*. The Tax Department denies the allegations set forth in the second sentence of Paragraph 12 of the *Complaint*.

13. The Tax Department admits the allegations set forth in Paragraph 13 of the *Complaint*.

14. The Tax Department denies that it failed to support the refusal to accept CNX’s proffered allocated expenses with credible evidence as alleged in the first sentence of Paragraph 14. Furthermore, the Tax Department admits that it questioned CNX’s “apportionment of expenses” since they do not provide the actual expenses of each well under protest as alleged in the first sentence of Paragraph 14. The Tax Department admits the allegations set forth in the second and third sentence of Paragraph 14 of the *Complaint*.

15. The Tax Department admits that Kirsten Evans, of Altus, testified on behalf of CNX at the Board of Assessment Appeals hearing in October 2016, as alleged in Paragraph 15 of the *Complaint*. The Tax Department admits that two pages were admitted into the record as

Exhibit 4 which were based on information contained in the CNX Gas Form 10-K for the 2014 calendar year as alleged in Paragraph 15 of the *Complaint*. The Tax Department denies the remaining allegations set forth in Paragraph 15 of the *Complaint*.

16. The Tax Department admits that Kirsten Evans, of Altus, testified regarding an impairment test performed by CNX; the Tax Department denies that the testimony and the test demonstrated that the CNX wells were overvalued under West Virginia law as alleged in the first sentence of Paragraph 16 of the *Complaint*. The Tax Department admits the remaining allegations in Paragraph 16 of the *Complaint*.

17. The Tax Department admits the allegations set forth in the first two sentences of Paragraph 17 of the *Complaint*. The Tax Department admits that Mr. Harden testified regarding the decline rate and operating expenses for the CNX wells as alleged in the third sentence of Paragraph 17; the Tax Department denies that Mr. Harden's testimony demonstrates that the CNX gas wells have been valued incorrectly under West Virginia law. The Tax Department admits the allegations set forth in the fourth sentence of Paragraph 17 of the *Complaint*.

18. The Tax Department admits the allegations set forth in Paragraph 18 of the *Complaint*.

19. 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 CNX appealed the decision to the Circuit Court of Barbour County as alleged in Paragraph 19 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 19; consequently, those allegations are denied.

20. Paragraph 20 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.

21. Paragraph 21 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.

22. Paragraph 22 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.

23. The Tax Department denies the allegations set forth in the first sentence of Paragraph 23 of the *Complaint*; the Tax Department states that CNX Gas has failed to cite any statutory authority 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 CNX presented actual operating expenses for each well under protest and further denies that the information provided by CNX is the type of information contemplated by the legislative rule as alleged in the last sentence of Paragraph 23. The remaining allegations set forth in Paragraph 23 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.

24. Paragraph 24 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.

25. The Tax Department denies the allegations set forth in the first two sentences of Paragraph 25 of the *Complaint*. The remainder of Paragraph 25 recites CNX'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.

26. The Tax Department denies that it has discretion to select the appraisal methodology for operating oil and natural gas wells as alleged in Paragraph 26 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.

27. The Tax Department denies the allegations set forth in Paragraph 27 of the *Complaint*. The Tax Department further denies that CNX provided the actual operating expenses for each well under protest as alleged in Paragraph 27 of the *Complaint*.



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

29. The Tax Department denies the allegations set forth in Paragraph 29 of the *Complaint*.

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

#### **AFFIRMATIVE DEFENSE NUMBER 1**

31. CNX Gas 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**

32. CNX Gas has failed to provide the actual operating expenses per well for the 314 gas wells under protest. CNX has simply provided the arithmetic average of its statewide expenses allocated to gas wells.

#### **AFFIRMATIVE DEFENSE NUMBER 3**

32. 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.

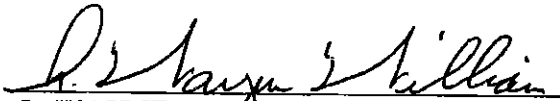
WHEREFORE, State Tax Commissioner and the Honorable John Cutright, Assessor of Barbour County, pray the Honorable Court DISMISS the Complaint with prejudice and for such additional relief as the Court deems just and proper.

Respectfully submitted,

MARK W. MATKOVICH,  
STATE TAX COMMISSIONER  
OF WEST VIRGINIA,

By counsel

PATRICK MORRISEY  
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "L. Wayne Williams", is written over a horizontal line.

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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 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 20<sup>th</sup>  
day of December, 2016, addressed as follows:

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