

REDACTED DECISION – DK#’S 24-1090

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON MAY 19, 2025
ISSUED ON AUGUST 1, 2025**

FINAL DECISION

The property owner in this matter is AAA, a Florida limited liability company that owns the working interest in twelve (12) natural gas wells in West Virginia. Upon learning of the proposed property tax values for these wells, determined by the Tax Commissioner, the property owner sought relief from the West Virginia Office of Tax Appeals.

Thereafter, on March 29, 2024, the property owner timely filed a property tax appeal with this Tribunal. An evidentiary hearing was held on December 9, 2024, and continued on January 22, 2025. After the filing of post hearing briefs, the record was closed on May 19, 2025, and the matter became ripe for decision at that time.

FINDINGS OF FACT

1. The property owner is a Florida Limited Liability Company, formed in 2018. Its only business activity is the production of natural gas, and these activities are conducted exclusively in West Virginia. Hr’g Tr. pp. 101-102.
2. The property owner owns twelve (12) natural gas wells. Pet. Ex. 1. However, this matter only involves eleven (11) of the twelve wells.¹ Five (5) of the eleven (11) are in BBB County, and the other six (6) are in CCC County. Pet. Ex. 9.
3. Sometime prior to the filing of its appeal with this Tribunal, the property owner became aware of the property tax valuations assigned to the wells by the Tax Commissioner, and

¹ There was some confusion during the evidentiary hearing regarding how many wells are involved in this matter. Petitioner’s Exhibit 1 identifies twelve (12) wells. There also was some confusion regarding a clerical error made by the Tax Commissioner involving the value of one well. After the conclusion of the evidentiary hearing the parties jointly submitted a revised Petitioner’s Exhibit 9. We have utilized this revised Exhibit 9 as both identifying the wells at issue, and the values each party attributes to each well.

took exception to those values. Specifically, the Petitioner takes exception with how the Tax Commissioner is applying both West Virginia Code Section 11-1C-10 and Title 110, Series 1J of the West Virginia Code of State Rules.²

4. In applying both the statutory and regulatory provisions at issue, the Tax Commissioner utilizes a computer program which the Tax Division calls “Integrated Assessment Systems” (hereinafter “IAS System”). Hr'g Tr. pp. 171:21-23, 172:1-5.
5. The property owner failed to present any evidence that the Property Tax Division had improperly programmed the IAS System, such that it does not properly comport with the Legislative Directives of West Virginia Code Section 11-1C-10 or West Virginia Code of State Rules Title 110, Series 1J. Nor did the property owner, save for the clerical error discussed above, present any evidence that the Property Tax Division had incorrectly entered the data necessary to value its working interest natural gas properties. Hr'g Tr. pp. 185:21-21, 186:1-10.

DISCUSSION

The property owner argues that the Tax Commissioner has improperly calculated the value of its natural gas producing property. Specifically, the Property owner argues that the improper valuation is the result of two particular failures on the Tax Commissioner’s part. First, his failure to apply actual decline rates to each well in the state versus his having established variable decline rates based upon Subsection 5.3 of Series 1J, Title 110 of the West Virginia Code of State Rules. Subsection 5.3 directs the Tax Commissioner to apply decline rates based upon the age of the well and that are also typical of the producing area and strata. Second, the property owner complains that the yield capitalization model utilized by the Tax Commissioner does not take into account

² The current version of Title 110, Series 1J went into effect on April 24, 2023, before the July 1, 2023, assessment date at issue in this matter.

the property owner's plugging costs incurred when production ceases. The property owner also has general complaints concerning the valuation of the natural resource property as well. The bulk of the property owner's complaints are not with any errors committed by the Tax Commissioner, but are, instead complaints with the direction the West Virginia Legislature has given to the Tax Commissioner as to how to value such property. As such, as an executive branch administrative agency, which can only identify and correct mistakes made by the Tax Commissioner, we are unable to offer relief to the property owner. Nonetheless, we address all of the property owner's complaints in turn.

Despite the fact that this Tribunal is a relative newcomer to hearing cases regarding property valuation, we have already been confronted numerous times with the arguments advanced by the property owner here. Those arguments can be summed up as stating: "property is supposed to be assessed at its true and actual value and there is no way anybody would offer me as much as you fill in assessor or Tax Commissioner name have valued my property."

The Property owner relies on two statutory provisions and the West Virginia Constitution to support its general proposition that to properly value its gas wells the Tax Commissioner must ascertain how much each well would sell for. "Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained **as directed by law.**" W. Va. Const. art. X, § 1 (emphasis added). The property owner next relies on Section 1 of Chapter 11, Article 6k, which states "(a) All industrial property and natural resources property shall be assessed annually as of the assessment date at sixty percent of its true and actual value. W. Va. Code Ann. § 11-6K-1 (West 2025). Finally, on page 6 of its post-hearing brief, it offers citation to West Virginia Code Section 11-3-1(a), quoting ". . . a [sic] price for which the property would sell if voluntarily offered

for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale.” See Brief of Petitioner p6. The property owner also offers citation to Syllabus Points 3 & 4 of CNG Transmission Corp. v. Craig, 211 W. Va. 170, 564 S.E.2d 167 (2002) and Syllabus Point 3 of Rowe v. W. Va. Dep't of Corr., 170 W. Va. 230, 292 S.E.2d 650 (1982). These three syllabus points all state the well settled points of law regarding agency regulations, which must faithfully reflect the intentions of the Legislature and must not limit or expand the agency’s statutory authority.

We find the property owner’s reliance on CNG and Rowe curious, because the West Virginia Supreme Court of Appeals recently issued a decision in Murray Energy Corp. v. Steager, 241 W. Va. 629, 827 S.E.2d 417 (West 2019), that is almost exactly on point with this current matter, and neither party offers citation to it.³ In Murray Energy, like here, the issue was the Tax Commissioner’s valuation of a natural resource, namely coal. And, like the natural gas owner here, the owner of the coal argued that the Tax Commissioner’s regulations (and published variables) did not achieve a true and actual value. The regulations and variables complained of concerned the Tax Commissioner’s usage of two averages, the statewide Steam Coal Price Per Ton and the seam thickness average. The Murray Energy court undertook what is colloquially called a Chevron/Appalachian Power analysis, which is a multi-step process to ascertain whether a legislative rule conflicts with the statutory provisions that gave it life.⁴ The

³ It is doubly curious that the Tax Commissioner offers no citation to Murray Energy, because he utilized the same expert in this matter that the Tax Commissioner at the time of Murray Energy utilized.

⁴ “[i]n deciding whether an administrative agency's position should be sustained, a reviewing court applies the standards set out by the United States Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).” Syl. Pt. 3, in part, *Appalachian Power Co.*, 195 W. Va. 573, 466 S.E.2d 424. In that regard, [t]he court first must ask whether the Legislature has directly spoken to the precise question at issue. If the intention of the Legislature is clear, that is the end of the matter, and the agency's position only

Chevron/Appalachian Power analysis is quite detailed, however, as will be discussed in greater detail below, this matter does not require the same depth of analysis.⁵ Suffice to say, the Murray Court first determined that the West Virginia Legislature had clearly given the Tax Commissioner the authority to develop valuation methodologies for coal.

Under this analysis, it is clear that the “true and actual” language of West Virginia Code § 11-6K-1(a) is fairly broad and non-specific as to its implementation inasmuch as it does not prescribe a methodology for determining “true and actual” value. More pointedly, West Virginia Code § 11-1C-10(e) expressly directs the Tax Department to “develop a plan for the ... valuation of natural resources property.” Accordingly, our taxation scheme for natural resources property does not contain merely an *implicit* “gap” in its directives, but an *express* gap, which it directs the Tax Department to close by developing valuation methodologies:

Id., at 640, 428. The Murray Court next analyzed whether the methodologies utilized by the Tax Commissioner rationally flowed from the Legislature’s directive to find valuations that reflect true and actual value. The Court ruled that both the statewide Steam Coal Price Per Ton and the seam thickness average did in fact flow rationally from West Virginia Code Section 11-6K-1, stating:

Like the agency action in *Chevron*, we find that the methodology set forth in West Virginia Code of State Rules § 110-11-1 *et seq.* insofar as the calculation of the SCPPT and seam thickness average reflects “a reasonable accommodation of manifestly competing interests.” *Chevron*, 467 U.S. at 865, 104 S.Ct. 2778. Moreover, as cautioned in *Appalachian Power*, “[w]e will not set aside a formally adopted legislative rule without clearcut evidence of an inconsistency between the rule and the authorizing statute.” 195 W. Va. at 588, 466 S.E.2d at 439. There is no such evidence here. We therefore hold that the methodology of calculating and use of the annual average Steam Coal Price Per Ton and coal seam thickness averages for *ad valorem* tax valuation purposes, as set forth in West Virginia

can be upheld if it conforms to the Legislature's intent”. Murray Energy Corp. v. Steager, 241 W. Va. 629, 639, 827 S.E.2d 417, 427 (West 2019).

⁵ This Tribunal is aware that Chevron, was overruled by the recent U.S. Supreme Court decision in Loper Bright Enters. v. Raimondo, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). Again, because we are not undertaking the Chevron/Appalachian Power analysis, the Loper decision does not affect our ruling.

Code of State Rules § 110-1I-1 *et seq.*, does not violate the requirement contained in West Virginia Code § 11-6K-1(a) that natural resources property be assessed based upon its “true and actual value.

Id., at 642, 430 (internal citations omitted).

One might expect that because the facts and arguments in this matter are so similar to what transpired in the Murray case, we would essentially follow the same two step analysis, however we need not do so. The reason we need not do so starts with the first question to be asked, when it comes to valuing **natural gas property**, has the Legislature left an “express gap” which it has directed the Tax Commissioner to fill? The answer to that question is a resounding no. A little history is necessary to explain our resounding no. It begins with the West Virginia Supreme Court of Appeals’ decision in Steager v. Consol Energy, Inc., 242 W. Va. 209, 832 S.E.2d 135 (West 2019). There, the West Virginia Supreme Court of Appeals found that the then current regulations regarding the valuation of oil and natural gas contained in Series 1J of Title 110 of the West Virginia Code of State Rules were lacking.⁶ The upshot of the Consol Energy decision was that both the Legislative and Executive branches realized that the clear directive from the Court required action. The Consol Energy decision came out in June of 2019. In the summer and fall of 2020 various stakeholders met, including legislators, natural gas industry officials and Tax Division employees. During the 2021 legislative session H.B. 2581 was passed. Among other things, this legislation directed the Tax Commissioner to propose an emergency rule by July 1, 2021, and that such rule must develop a process of valuing natural gas (and other natural

⁶ “The provisions contained in West Virginia Code of State Rules §§ 110-1J-4.1 and 110-1J-4.3 (2005) for a deduction of the average annual industry operating expense requires the use of a singular monetary average deduction.” Syl. Pt. 12 Steager v. Consol Energy, Inc., 242 W. Va. 209, 832 S.E.2d 135 (2019).

resources)⁷ utilizing a yield capitalization model. However, when those amendments were presented to the Legislative Rule Making Review Committee on January 9th, during the 2022 legislative session, the Committee rejected the proposed rule in its entirety.⁸ On January 21, 2022, the House then introduced H.B. 4336, which amended West Virginia Code Section 11-1C-10. These amendments included a new Subdivision (3) to Section 10, and this Subdivision laid out in great detail how, after passage, the Tax Commissioner was to value natural gas. In similar fashion to the direction given to the Tax Commissioner in H.B. 2581, Subdivision (2) directs that natural gas shall be valued utilizing a yield capitalization model, and lays out the modeling in great detail. Next, the Tax Commissioner again drafted amendments to Series 1J of Title 110 of the Code of State Rules, and this time the Legislative Rule Making Review Committee approved them.⁹ Finally, during the 2024 Legislative Session, the House introduced H.B. 4850, which again amended Section 10. The bill again made changes, although more minor, to the yield capitalization model. H.B. 4850 also removed a sunset provision that would have removed the valuation methodology for natural gas on July 1, 2025.

So what is the import of this legislative history? As stated above, we believe the West Virginia Supreme Court of Appeals' decision in Murray Energy controls this matter because of the similar legal arguments made by both parties. However, the difference between the situation in Murray Energy, and here, is that in the coal case the entirety of the analysis was whether the Tax Commissioner's rule/variables went beyond the mandate given by the Legislature. Here, if we take all of the actions undertaken by the various legislatures since 2021, it is clear that the

⁷ Section 10 deals with the valuation of many natural resources. The amendments discussed all concerned changes to the valuation methodology for producing oil, natural gas, and at some point natural gas liquids. Due to the nature of the property owner's complaints in this matter, we are only concerning ourselves with changes to the valuation methodology for natural gas.

⁸ Mike Tony, Oil, Gas Tax Valuation Rule Eyed, Charleston Gazette-Mail, Jan. 11, 2022, at 1A.

⁹ See S.B. 345, 86th Leg., Reg. Sess. (W. Va. 2023).

legislative branch has taken the reins when it comes to valuing natural gas. We find most telling, the Legislature's wholesale rejection of the Tax Commissioner's first attempt at a legislative rule in January of 2022. As such, we need not undertake the Chevron/Appalachian Power analysis. We rule that the Legislature has not left any gaps, either implicit or express regarding this topic, and that its intent is crystal clear. Due to this clarity, we find unavailing the property owner's foundational argument, namely that the Tax Commissioner has failed in his duty to achieve true and actual value. Simply put, the Tax Commissioner is doing exactly what the West Virginia Legislature has directed. By its actions since 2021, and particularly in 2022, the Legislature has clearly shown that it is capable of making its intentions regarding natural gas valuation perfectly clear. Neither the property owner here, or any other property owner appearing before this Tribunal has argued that the IAS computer program does not follow the model laid out in West Virginia Code Section 11-1C-10(e) or Series 1J. Nor has the property owner argued that there was some type of clerical or data entry error in the valuations complained of.

The property owner also has two specific complaints regarding the valuation of its natural gas property.¹⁰ First, it argues that the Tax Commissioner has violated a statutory duty by submitting some of the yield capitalization model variables to the West Virginia Secretary of State for public comment, as opposed to adopting them via legislative rule. The statute that the property owner claims the Tax Commissioner has violated is West Virginia Code Section 11-1C-5a. We find the property owner's citation to Section 5a puzzling, because it is a nearly thirty (30) year old statute that says nothing about the valuation of natural resource property, let alone anything about

¹⁰ Technically, the property owner has three specific complaints. One of those is that the Tax Commissioner is not utilizing an appropriate decline rate in contravention of Section 5.3 of Series 1J. We find that argument to be unavailing for the same reasons stated above. Moreover, the property owner never identifies exactly how the Tax Commissioner is failing to properly follow Section 5.3. Its complaints are of the same generic variety as its foundational argument, namely that the Tax Commissioner's decline rates are not site specific enough, have not been updated, and are thus outdated.

the Tax Commissioner's variable calculations under the yield capitalization model.¹¹ As discussed at length above, Series 1J of Title 110 of the Code of State Rules has been through legislative rule making numerous times. What is even more detrimental to the property owner's argument is Section 10 of Series 1J, which states:

10.1. The Tax Commissioner shall, on or before July 1 of each year, publish and file in the State Register an annual summary of the variables to be considered in arriving at the value of the specific oil or natural gas related property. Public comments shall be accepted until August 1 of each year with the final results filed in the State Register on or before September 1 of each year.

10.2. The published variables shall include, but not be limited to, information about the components of the capitalization rates and the safe harbor rates.

W. Va. Code R. § 110-1J-10 (2024). Once again, the property owner's argument regarding the variables follows a very similar theme to its foundational argument, namely that the Tax Commissioner is some rogue actor who is ignoring his mandate to achieve true and actual value and to make sure that all of his or her rules regarding property valuation go through legislative rule making. To this, we generally say, see the discussion above. Moreover, when it comes to the propriety of the Tax Commissioner utilizing variables that are not vetted by the Legislative Rule Making committee, obviously Section Heading 10 renders that argument quite unconvincing. The West Virginia Legislature has not only given the Tax Commissioner clear direction regarding his or her ability to publish annual variables for natural gas property, but Section 10.2 tells him or her

¹¹ "After the first day of January, one thousand nine hundred ninety-six, all rules proposed or promulgated by the tax commissioner regarding the valuation of real or personal property within the state shall be subject to review by the legislative rule-making review committee as provided in section eleven, article three, chapter twenty-nine-a of this code, and no such rules relating to the valuation of real or personal property within the state shall be promulgated as emergency legislative rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code." W. Va. Code Ann. § 11-1C-5a (West 2025).

some of the specific items the Legislature wants published therein. Additionally, this argument ignores the fact that the Tax Commissioner **has** drafted rules regarding the yield capitalization model, and those rules were vetted and approved by the Legislature. Those rules, by their plain language authorize him to utilize the publication of variables. As a result, we are unable to rule for the property owner on this point.

The property owner's final argument is that the Tax Commissioner's failure to take into account the cost to plug a well once it stops producing improperly inflates the values under the yield capitalization model. There was some testimony on this point. One of the property owner's expert witnesses stated that it was his understanding that the Tax Commissioner takes the position that plugging costs are capital expenditures not to be taken into account when valuing the well. However, the Tax Commissioner's witness merely testified that the plugging costs are not part of the yield capitalization model. The property owner offers no citation to any authority, statutory, regulatory or case law regarding this argument.

Again, the yield capitalization model, as laid out in Series 1J is quite detailed regarding how to value natural gas interests. Section Heading 4 lays out the general methodology, and states: "The value of oil producing property or natural gas producing property, or property producing both, shall be determined through the process of applying a yield capitalization model to the net receipts (gross receipts less royalties paid and less actual annual operating costs) . . ." W. Va. Code R. § 110-1J-4.1 (2023). Section Heading 7 of Series 1J explains in great detail what are, and what are not annual operating costs. "Actual annual operating costs are those costs or fees incurred by the producer from the well to the point of sale." *Id.*, at 7.1. Section 7.3 goes on to list what expenditures are considered actual annual operating costs: "Lifting costs . . . Lease operating expenses . . . transportation costs . . . processing, separation and fractionation costs . . ." *Id.*, at 7.3.

Subdivision 7.3.2.b explains that lease operating expenses does not include “depreciation, depletion, extraordinary expenses, ad valorem taxes, **capital expenditures**, . . .” Id. at 7.3.2.b. (emphasis added). Finally, section 7.4 goes on to list what items are not considered actual annual operating costs:

Overhead and administrative costs . . . Taxes and fees . . . Costs of surety . . . Fees or costs incurred for storage . . . Aggregator or marketer fees . . . Penalties incurred as shipper . . . Intra-hub transfer fees . . . Fees paid to brokers . . . Fees paid to scheduling service providers . . . Internal costs . . . Other costs. -- Depreciation, depletion, extraordinary expenses, ad valorem taxes, **capital expenditures**, intangible drilling costs, expenditures relating to vehicles or other tangible personal property not permanently used in the production of natural gas or oil shall not be included as operating costs.

Id. at 7.4. (emphasis added).

We find the property owner’s arguments regarding the need to take plugging costs into consideration to be unavailing. First and foremost, we are unconvinced, because the property owner has not convinced us. A review of the regulatory provisions above shows that certain annual operating costs are to be taken into consideration, and other expenses are not. It appears that the legal question to be answered is, is plugging a well at the conclusion of natural gas production an annual operating cost or a capital expenditure? Or, put another way, the question is, under generally accepted accounting principals, is plugging a well an expense or a capital cost? The property owner offered no evidence at all to answer this question, let alone testimony from an accountant.

A review of the language in Section Heading 7 counsels against a ruling for the property owner. For example, section 7.1 explains that operating costs can only be incurred from the well to the point of sale. Obviously, once a well is being plugged there are no more sales. The language in section 7.3 also seems to suggest that a cost incurred after gas production is completed would

not be an operating cost. This is because, again, all of the costs listed there, e.g., lifting costs, lease operating expenses, transportation costs and processing, separation and fractionation costs are all costs that can only be incurred while production is ongoing. Finally, we would once again refer to the analysis above, regarding the Legislature making its intentions clear. If the Legislature wanted to clarify that it considered well plugging costs an annual operating cost, it could have clearly stated as such.

In summation, this Tribunal believes that the Legislature has clearly spoken regarding how natural gas property interests are to be valued in West Virginia. Additionally, the Legislature has clearly given the Tax Commissioner the authority to annually publish a summary of the variables he utilizes regarding capitalization and safe harbor rates. Finally, the property owner has not met its burden of proving that when valuing its natural gas property, the Tax Commissioner committed an error, by not taking into account the property owner's costs to plug a well once production has ceased.

CONCLUSIONS OF LAW

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. §11-1-2 (West 2025).

2. It is also the duty of the Tax Commissioner to ascertain the fair market value of industrial and natural resource property in West Virginia. *See* W. Va. Code Ann. § 11-1C-10 (West 2025).

3. In a hearing before the West Virginia Office of Tax Appeals the burden of proof is upon the Petitioner to show that the actions taken by the Tax Commissioner are erroneous,

unlawful, void or otherwise invalid. See W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. §§ 121-1-37.5 (2023).

4. Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. W. Va. Const. art. X, § 1.

5. All industrial property and natural resources property shall be assessed annually as of the assessment date at sixty percent of its true and actual value. W. Va. Code Ann. § 11-6K-1(a) (West 2025).

6. (A) The Tax Commissioner shall value property producing oil, natural gas, natural gas liquids, or any combination thereof in the state at its fair market value determined through the process of applying a yield capitalization model to the net proceeds. WV LEGIS 274 (2022), 2022 West Virginia Laws Ch. 274 (H.B. 4336).

7. (G) The Tax Commissioner shall propose rules required to administer this subdivision, including emergency rules, in accordance with § 29A-3-1 *et seq.* of this code, regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof. WV LEGIS 274 (2022), 2022 West Virginia Laws Ch. 274 (H.B. 4336).

8. In deciding whether an administrative agency's position should be sustained, a reviewing court applies the standards set out by the United States Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).” Syl. Pt. 3, in part, *Appalachian Power Co.*, 195 W. Va. 573, 466 S.E.2d 424. In that regard, [t]he court first must ask whether the Legislature has directly spoken to the precise question at issue. If the intention of the Legislature is clear, that is the end of the matter, and the agency's

position only can be upheld if it conforms to the Legislature's intent. Murray Energy Corp. v. Steager, 241 W. Va. 629, 639, 827 S.E.2d 417, 427 (West 2019).

9. Accordingly, our taxation scheme for natural resources property does not contain merely an *implicit* “gap” in its directives, but an *express* gap, which it directs the Tax Department to close by developing valuation methodologies. *Id.*, at 640, 428.

10. When it comes to valuing natural gas property, beginning with the Legislative Session in 2021, the West Virginia Legislature has neither left an implicit gap, nor an express gap for the Tax Commissioner to fill.

11. West Virginia Code of State Rules, Title 110, Series 1J reflects the explicit intentions of the Legislature, when it comes to filling out the valuations methodologies contained in West Virginia Code Section 11-1C-10.

12. The property owner has not met its burden of showing that through his application of West Virginia Code of State Rules Title 110, Series 1J, the Tax Commissioner has impermissibly closed a gap left by the Legislature in the valuation methodologies of natural gas property. The Legislature has left no such gap.

13. 10.1. The Tax Commissioner shall, on or before July 1 of each year, publish and file in the State Register an annual summary of the variables to be considered in arriving at the value of the specific oil or natural gas related property. Public comments shall be accepted until August 1 of each year with the final results filed in the State Register on or before September 1 of each year. 10.2. The published variables shall include, but not be limited to, information about the components of the capitalization rates and the safe harbor rates. W. Va. Code R. § 110-1J-10 (2024).

14. The property owner has not met its burden of showing that the Tax Commissioner impermissibly failed to utilize the legislative rule-making process to establish certain the components of the capitalization rates and the safe harbor rates.

15. lease operating expenses does not include “depreciation, depletion, extraordinary expenses, ad valorem taxes, **capital expenditures**, . . .” W. Va. Code R. § 110-1J-7.3.2.b (2023).

16. The property owner has not met its burden of showing that the cost of plugging a well once production has ceased is not a capital expenditure.

17. The property owner has not met its burden of showing that the actions taken by the Tax Commissioner, in valuing its natural resource property, were erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that the Tax Commissioner’s valuation of the property owner’s working interests in the properties identified in finding of fact number 2 above and Petitioner’s Exhibit 9, are hereby **AFFIRMED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
A.M. “Fenway” Pollack
Chief Administrative Law Judge

Date Entered

