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SUPREME COURT OF KENTUCKY
CASE NO. 2013-SC-000598-CL

APPALACHIAN LAND COMPANY **APPELLANT**

v. **Question of Law from United States Court of Appeals for the Sixth Circuit, No. 12-5589**

EQT PRODUCTION COMPANY **APPELLEE**

BRIEF OF AMICUS CURIAE
KENTUCKY OIL AND GAS ASSOCIATION, INC.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Brief of Amicus Curiae for the Kentucky Oil and Gas Association, Inc., has been served by U.S. Mail, postage prepaid, to Hon. George E. Stigger, 236 Cardinal Circle West St., Mary's, GA 31558, Hon. John C. Whitfield, Whitfield, Bryson & Mason, LLP, 19 North Main Street, Madisonville, KY, 42431; Gregory L. Monge, Kimberly S. McCann, and Keri E. Lucas, VanAntwerp, Monge, Jones, Edwards & McCann, LLP, P.O. Box 1111, Ashland, KY 41105-111; Hon. Judge Karen Caldwell, Chief Judge, U.S. District Court, 101Barr Street, Lexington, KY 40507; United States Court of Appeals for the Sixth Circuit, 540 Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, OH 45202-3988; and ten (10) copies to Hon. Susan Stokley Clary, Clerk, Supreme Court of Kentucky, State Capitol, Room 235, 700 Capitol Ave., Frankfort, KY 40601, by hand delivery this 5TH day of August, 2014.

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INTRODUCTION

The Kentucky Oil and Gas Association ("KOGA") appears as *amicus curiae* out of concern that Court not disturb the long-standing contractual allocation of post-production costs, including severance taxes, between operators and landowners. KOGA, a 501(c)(6) non-profit industry association, was established in 1931 to advance the oil and natural gas business in Kentucky. It represents the interests of 220 member companies and over 600 member representatives engaged in oil and gas production, drilling, operations, and related enterprises in Kentucky. This Court has been asked by the Sixth Circuit whether severance taxes may be included in post-production costs, and, thus, deducted from royalty payments proportionate to the royalty owner's share, pursuant to the "at-the-well" rule.[1]

The deduction of a proportionate share of severance taxes from the landowner/lessor's royalty is a widespread and long-standing industry practice on which many of the gas operators in Kentucky have based their contractual and business

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[1] EQT is the lessee of certain natural gas interests from the lessor Appalachian. The parties' lease is silent as to whether post-production costs should be deducted from the royalty EQT pays to Appalachian for the sale of natural gas. The lease states that EQT must pay Appalachian "one-eighth (1/8) of the market price of gas at the well." EQT, like numerous natural gas producers deducts the royalty owner's proportionate share of post-production expenses, including severance taxes, from the royalty that EQT pays Appalachian.

Appalachian argues that post-production costs should not be deducted from the royalty payments. This case was stayed while a similar case, *Poplar Creek Development Company v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011), was pending before the Sixth Circuit. In *Poplar Creek*, the Sixth Circuit held that Kentucky would apply the majority "at-the-well rule" allowing post-production costs "to be shared proportionately by the working interest and royalty owners unless the lease provides otherwise." *Id.* at 240-41 (6th Cir. 2011).

Whether severance taxes are post-production costs was not at issue in *Poplar Creek*. The only question before the Court is whether severance taxes are post-production costs under the "at-the-well" rule.

arrangements. A reversal of that practice, as requested by Appellant, Appalachian Land Company ("Appalachian"), would have a devastating effect on many of the small producers who are the backbone[2] of Kentucky's $1.1 billion dollar oil and gas industry.[3]

For years, oil and gas leases have provided that the landowner would receive royalties on natural gas based on the price or value of the product "at the well" or other similar language. Kentucky law also presumes that where the lease is silent on the point of valuation, royalties are calculated on the price "at-the-well." *See, e.g., Reed v. Hackworth*, 287 S.W.2d 912, 913-14 (Ky. 1956). However, gas is not sold in its natural state at-the-well. It is now treated, processed and transported to distant markets where the price paid for the gas reflects those "post-production" activities and expenditures. Thus, under such leases the price "at-the-well" must be calculated. That calculation "nets back" from the actual sales price of the gas and deducts the "post-production costs" incurred between the wellhead and the point of sale.

Pursuant to the "at-the-well" rule, "post-production costs are to be shared proportionately by the working interest and royalty owners." *Poplar Creek Development*

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[2] According to the Kentucky Division of Oil and Gas, in June 2014, ninety-nine percent (99%) of Kentucky's oil and gas operators have fewer than 100 wells. Ninety-eight percent (98%) of Kentucky's oil and gas operators have fewer than 50 wells. Kentucky's oil and gas industry foundation is built upon small, Kentucky-based "Mom and Pop" operations.

[3] Coomes, Paul "The Economic Impact of the Oil and Gas Industry on Kentucky's Economy." Dr. Coomes' research reported that Kentucky's oil and gas industry has a total production value of $1,108,807,700 within Kentucky's economy. In 2011 (the most recent data available), Kentucky's oil and gas industry supported over 11,200 "proprietors" and "wage and salary" employees in direct (e.g. production, drilling and affiliated service support) and "downstream" jobs (e.g. pipeline transportation, refineries and industrial gas manufacturing). Average annual wages in these industry segments ranged from $45,000 to $107,000 a year.

Company v. Chesapeake Appalachia, L.L.C., 636 F.3d 235, 240-41 (6th Cir. 2011) (citing *Schroeder v. Terra Energy, Ltd.*, 565 N.W.2d 887, 894 (Mich. App. 1997). "Post-production costs" include expenses such as gathering, compression, transportation, treatment, and (at issue in this case) severance taxes.

In the trial court decision below, Judge Caldwell correctly ruled that "[t]he Kentucky severance tax is simply another post-production cost that leads to a market price that is higher than the at-the-well price." *Appalachian Land Co. v. EQT Production Co.*, No. 7:08-cv-00139-KKC, 2012 WL 523749, at *3 (E.D. Ky. Feb. 16, 2012). That court appropriately recognized that the payment of severance taxes "is an expense required to bring the gas to market, and the expense is included in the ultimate market price." *Id.* This Court should reach a similar conclusion.

The statutes imposing a tax on natural resources such as gas (sometimes referred to as the "severance tax") are KRS § 143A.010 *et seq*. Those statutes do not determine the allocation of costs between a lessee and a lessor in calculating the royalty payable to the lessor. That is a contractual matter determined by the parties' lease. The taxing statutes simply establish who must remit the tax to the Commonwealth and who is responsible to the Commonwealth if the tax is not paid. In so doing, the statutes do not determine whether such taxes are post-production costs or whether they may be deducted from the sales price to calculate the royalty owed to the lessor under the terms of parties' lease. As shown below, however, the language of the taxing statutes supports such a deduction.

Allowing a lessor/landowner to reap the benefit of a higher market price, without paying its proportionate share of **all** of the costs necessary to achieve that price (including

severance tax), would grant the lessor a windfall that is not only unfair but which Kentucky law disfavors. In addition, requiring the lessee to bear the landowners' rightful share of the severance tax will discourage development of Kentucky's oil and gas resources, contrary to the state's public policy to "encourage exploration for [all minerals] . . . and to encourage the maximum recovery of oil and gas from all deposits thereof . . . ." KRS 353.500(1). KOGA urges the Court to find that severance taxes are a post-production expense that are properly deductible in calculating royalties when the lease provides that royalties are to be paid "at-the-well."

ARGUMENT

I. KENTUCKY FOLLOWS THE "AT-THE-WELL" RULE WHICH PERMITS THE DEDUCTION OF POST-PRODUCTION EXPENSES.

Kentucky courts have long found it appropriate to deduct post-production costs to arrive at the "price at-the-well" of oil or gas. Among those cases are *Cumberland Pipe Line Co. v. Commonwealth*, 15 S.W.2d 280 (Ky. 1929); *Rains v. Kentucky Oil Co.*, 255 S.W. 121 (Ky. 1923); *Warfield Natural Gas Co. v. Allen*, 88 S.W.2d 989 (Ky. 1935); and *Reed v. Hackworth*, 287 S.W.2d 912 (Ky. 1956). Severance tax, like gathering, compression, treatment, and transportation costs, is a post-production expense that also must be deducted from the sales proceeds to determine the "price at-the-well" – the point commonly used in leases and Kentucky case law to value royalties.[4]

Federal courts have interpreted Kentucky law to allow the deduction of post-production costs. In *Poplar Creek*, *supra*, both the Federal District Court and the Court

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[4] *See, e.g., Reed v. Hackworth*, 287 S.W.2d 912, 913-14 (Ky. 1956) ("where, as here, the lease is silent concerning the place of the market and the price, the royalty should be applied to the fair market value of the gas *at the well*") (emphasis added); *see also*, *Warfield Natural Gas Co. v. Allen*, 88 S.W.2d 989 (Ky. 1935) (same).

of Appeals for the Sixth Circuit held that Kentucky law permits the deduction of post-production expenses to determine the value of the gas "at-the-well," even though the gas is sold elsewhere.

The bankruptcy court *In Re KY USA Energy, Inc.*, 448 B.R. 191 (Bankr. W.D. Ky. 2011), also interpreted Kentucky law to allow the deduction of post-production expenses in calculating royalties at-the-well. The Court agreed with the analysis in *Poplar Creek*. Presumably because Kentucky law was so clear on this point, the bankruptcy court refused to certify the issue to the Kentucky Supreme Court for review:

> The Court finds that Kentucky *juris prudence* was followed in the *Poplar Creek* case and thoroughly analyzed by the District Court and the Sixth Circuit Court of Appeals. There is no reason for this Court to certify this question and pass it on for a decision to the Kentucky Supreme Court, as the issue has been fully and finally decided in accordance with long standing Kentucky authority.

Id. at 196.

Based on Kentucky case law and these Federal interpretations, it is apparent that Kentucky follows the "at-the-well" rule which permits the deduction of post-production costs to calculate royalties "at-the-well." Indeed, the applicability of the general rule has not been challenged in this appeal, and it stands as the law of the case. KOGA submits that the rule also applies to severance taxes as a post-production cost.

II. THE "AT-THE-WELL" RULE LOGICALLY APPLIES TO SEVERANCE TAX.

The logic of the "at-the-well" rule applies with equal force to severance tax, which is necessarily incurred after the gas leaves the wellhead and which must be incurred for the gas to be marketed. In this case, the District Court correctly applied the "at-the-well" rule to permit deduction of severance taxes. *Appalachian Land Co. v. EQT Production Co.*, No. 7:08-cv-00139-KKC, 2012 WL 523749 (E.D. Ky. Feb. 16, 2012).

The District Court found the "at-the-well" rule applied to severance taxes because "[t]he payment of severance taxes is an expense required to bring the gas to market, and the expense is included in the ultimate market price." *Id.* at *3. The Court further stated:

> The Kentucky severance tax is simply another post-production cost that leads to a market price that is higher than the at-the-well price. Therefore, it is appropriate for EQT to deduct taxes, in addition to post-production costs, from the market price to determine the at-the-well price and then pay ALC royalties based that price.

Id.

Accordingly, the District Court appropriately held that the lessor and lessee should each bear a proportionate share of those costs, including severance taxes, consistent with the "at-the-well" rule applicable under Kentucky law. This Court should make a similar determination.

III. THE TAXING STATUTES CONFIRM THAT THE SEVERANCE TAX IS A POST-PRODUCTION COST.

Appalachian asserts that the severance tax statute supports its argument because the tax is only assessed on the mineral owner. (Appalachian's Brief at 6-15). To the contrary, however, the statutory framework imposing the Kentucky severance tax actually confirms that the tax is a post-production expense. Severance tax is levied at a point well ***after the gas has been brought to the wellhead***, that is, after the gas has been "produced." Kentucky Revised Statute § 143A.020(1) states, in pertinent part, that the 4.5% tax rate applies "to the gross value of the natural resource severed or processed . . . ." Pursuant to KRS § 143A.010(3), "severed" is defined as the "physical removal of the natural resource from the earth . . . ." From this language, it is clear that the Legislature intended to tax the natural resource ***after it was physically removed from the property***, thus making the tax properly characterized as a post-production cost. The tax is assessed

on the "gross value" of the gas which is measured by the sales price that is received for the gas. This assessment of the tax at the remote sales point is confirmed by the statutes' allowance for the deduction of transportation costs from that price. KRS 143A.010—20. There is no doubt, then, that the tax is assessed ***after*** the gas is severed from the ground and at its remote sales destination. Consequently, it is clearly a post-production cost.

As such, it is not only appropriate but necessary that the tax be deducted to arrive at the true wellhead value of the gas. Without the deduction, the lessor would evade its rightful share of the post production costs, and it would benefit unfairly at the cost of the producer.

Appalachian is misguided in its contention that gas is "severed" for purposes of the severance tax statute before it is brought to the surface. It is further in error that the severance tax "attaches" to gas prior to the wellhead. On the first point, Appalachian contends that *Clay County v. Leslie County*, 531 S.W.2d 524 (Ky. 1975), a coal severance case, supports its argument that the severance tax is a production expense because severance occurs when the coal has departed from its formation under the ground, not as it leaves the surface. *Clay County* is totally inapplicable to oil and gas. While coal may be severed from its natural formation underground, oil and gas are not solid in a formation and are not severed until after they are brought to the surface.

As to the second point, the taxing statutes say nothing about the tax "attaching" to gas at all. The statutes simply identify the severor as the person responsible for paying the tax. However, the tax is "assessed" on its sales value, at its point of the sale. To the extent the severance tax "attaches" to gas, surely it attaches where the tax is assessed.

IV. *BURBANK v. SINCLAIR PRAIRIE OIL CO.* AND OTHER CASES RELIED UPON BY APPALACHIAN ARE INAPPLICABLE AND READILY DISTINGUISHABLE.

Appalachian relies upon *Burbank v. Sinclair Prairie Oil Co.*, 202 S.W.2d 420 (Ky. 1946), to support its conclusion that the producer should bear the entire severance tax burden. The issue here is not whether the producer is a "taxpayer" under the statute. Rather, the issue is whether the parties' lease allows the deduction of severance taxes as a post-production cost to calculate royalties due "at-the-well." Whether the statute requires the producer, to collect and pay the tax is immaterial to a determination of whether the leases permit the deduction of severance tax as a post-production expense under the "at-the-well" rule.

Second, the circumstances of *Burbank* are distinguishable. The statute at issue in *Burbank* was KRS 137.120, *et seq.* That statute, at KRS 137.120(3), currently provides that the tax "shall be imposed and attached when the crude petroleum is first transported from the tanks or other receptacle located at the point of production." This language appeared in the 1946 version of the statute as well.[5]

In *Burbank*, the parties' lease provided that lessor was to receive "the equal of part 1/8 of all oil produced and sold from the leased property." *Id.* at 421. Unlike gas, oil was and is typically sold at-the-wellhead. The price of the oil at assessment (and thus the tax assessed) was not benefited by any post-production expenses. Thus, there was no need for the sales price to be adjusted to a "wellhead price," and there was no need for

[5] Since 1946, the remaining language of the current KRS 137.120(3) was added to say that the tax "shall be imposed ratably upon all persons owning any interest in such oil." This added language arguably nullifies the analysis and holding of *Burbank*. *See* Kentucky Revised Statutes (3d Biennial Edition) 1946.

the deduction of post-production costs. That is entirely different from the situation in this case.

The holding in *Burbank* is confined to the facts of that matter and to the language of the statute at issue there. *Burbank* involved different royalty language than that at issue here and a different point of assessment of the tax. *Burbank*, therefore, should not guide the calculation of gas royalties under leases calling for royalties calculated "at-the-well."

Appalachian also cites Missouri cases that construe a Kentucky lease. These cases are inapplicable because they concern a lease which expressly based the royalty on the "average gross sales realization" which was defined as the "sales price without deduction of sales commission or expenses." That contractual definition expressly exempts expenses from calculation of the royalty, and has no application to an "at-the-well" calculation. *Reis v. Peabody Coal Co.*, 997 S.W.2d 49 54 (Mo. App. 1999); *see also Willits v. Peabody Coal Co.*, 188 F.3d 510, at *9 (6th Cir. 1999) (lease excluded transportation costs); *Hemenway v. Peabody Coal Co.*, 159 F.3d 255, 256 (7th Cir. 1998) (royalties calculated before deductions).

The lease in this case and the typical "at-the-well" calculation does not contractually prohibit deducting post-production costs in calculating the landowner's royalty.

V. THE MAJORITY VIEW SUPPORTS THE DEDUCTION OF SEVERANCE TAXES.

The majority of jurisdictions considering this issue have held that lessees may deduct the taxes and costs required to take gas from the wellhead in calculating royalties. These jurisdictions have specifically upheld the deduction of severance and processing

taxes. *See, e.g.*, *Sartor v. United Carbon Co.*, 163 So. 103 (La. 1935) (holding that lessees properly deducted lessor's proportionate share of severance tax due before paying royalty); *Brown v. Shell Oil Co.*, 339 N.W.2d 709 (Mich. App. 1983) (construing Michigan severance tax to be applicable to royalty interests); *Gulf Refining Co. v. Stone*, 21 So.2d 19 (Miss. 1945) (holding that severance tax statute validly taxed the royalty interest and therefore justified lessee's claimed deduction); *Ashland Oil Co. v. Jaeger*, 650 P.2d 265 (Wyo. 1982) (royalty owner liable for proportionate share of *ad valorem* and severance taxes). The Fifth Circuit has also long approved of these deductions. *See Arkansas Natural Gas Co. v. Sartor*, 78 F.2d 924 (5th Cir. 1935) (on cross-appeal, court held lessee properly deducted severance tax from when calculating royalty).

In *Cartwright v. Cologne Production Co.*, 182 S.W.3d 438 (Tex. App. 2006), the Texas Court of Appeals stated:

> Whatever costs are incurred after production of the gas or minerals are normally proportionately borne by both the operator and the royalty interest owners. These post-production costs include taxes, treatments costs to render the gas marketable, compression costs to make it deliverable into a purchaser's pipeline, and transportation costs.

Id. at 444-445. "Although it is not subject to the costs of production, royalty is usually subject to post-production costs, including taxes, treatment costs to render it marketable, and transportation costs." *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 122 (Tex. 1996); *see also Babin v. First Energy Corp.*, 693 So.2d 813, 815 (La. App. 1st Cir. 1997) (noting "[t]he costs of severance taxes, transportation, processing, and treatment are considered to be post-production costs and, are therefore, borne proportionately by the lessee and the royalty owner."). Some of the "post-production costs" or "costs

subsequent to production" include the "gross production and severance taxes . . . ." *See* 3 WILLIAMS & MEYERS, § 645.2, pp. 599-602.

Scholars in the industry have also opined that severance taxes should be deducted from royalty interests pursuant to the at-the-well rule. Hardwicke, *Problems Arising Out of Royalty Clauses in Oil and Gas Leases in Texas*, 39 Tex. L. Rev. 790, 800 (1951) (severance taxes are ordinarily deducted from lessor's royalty interest); 8 Howard R. Williams & Charles J. Meyers, *Oil and Gas Law* 645.2, ppg. 599-602 (Patric H. Martin & Bruce M. Kramer, eds. 2012) (severance taxes listed as the first post production expense).

Like other post-production costs, severance taxes must be deducted to determine the market price "at-the-well" required under the parties' agreements. The tax is imposed after extraction on the value at the remote point of sale. As a matter of law, since the tax on severed or processed natural gas occurs post-production, it is properly deductible.

VI. THE LANGUAGE OF THE TAXING STATUTES, WHILE IRRELEVANT TO THE PARTIES' ALLOCATION OF TAXES BETWEEN THEMSELVES, SUPPORTS THE DEDUCTION OF SEVERANCE TAX TO DETERMINE ROYALTIES.

The taxing statutes are set forth in KRS § 143A.010 *et seq.* KRS § 143A.020 is the primary operative provision:

> (1) For the privilege of severing or processing natural resources in this state, a tax is hereby levied at the rate of four and one-half percent (4.5%) on natural gas and four and one-half percent (4.5%) on all other natural resources, such rates to apply to the gross value of the natural resource severed or processed except that no tax shall be imposed on the processing of ball clay.
>
> (2) The tax shall apply to all taxpayers severing and/or processing natural resources in this state, and shall be in addition to all other taxes imposed by law.

KRS § 143A.010 supplies the definitional framework for several terms utilized in KRS § 143A.020:

(4) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind engaged in the business of severing and/or processing natural resources in this state for sale or use. In instances where contracts, either oral or written, are entered into whereby persons, organizations or businesses are engaged in the business of severing and/or processing a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(5) "Gross value" is synonymous with gross income from property as defined in section 613 of the Internal Revenue Code and regulations 1.613-3 and 1.613-4 in effect on December 31, 1977, with the exception that in all instances transportation expense, as defined in subsection (9) of this section incurred in transporting a natural resource shall not be considered as gross income of property. . . .

. . .

(8) "Economic interest" for the purpose of this chapter is synonymous with the economic interest ownership required by Internal Revenue Code, Section 611 in effect on December 31, 1977, entitling the taxpayer to a depletion deduction for income tax purposes with the exception that a party who only receives an arm's length royalty shall not be considered as having an economic interest.

Kentucky Revised Statutes § 143A.020(2) states that the severance tax applies to all "taxpayers." Subsection (4) defines a "taxpayer" one who severs the natural resource *or*, in certain circumstances, one who has an economic interest in it. The lessor "owns" the natural gas, notwithstanding that it has leased it to a producer. *See, e.g., Swiss Oil Corp. v. Hupp*, 69 S.W.2d 1037, 1043 (Ky. 1934) (oil and gas "lessee is limited to exploring and producing" and does not acquire title to the oil and gas "until it has been taken from the ground") (citations omitted). Thus, one cannot say that a lessor cannot be a "taxpayer" under the statute.

Appalachian argues that the statutory framework in KRS § 143A.010 *et seq.* is similar to the coal severance tax provided for in KRS Chapter 143 enacted eight years

earlier in 1972. That perception of similarity, however, is incorrect as it ignores the fundamental distinction between coal and natural gas. Under longstanding Kentucky law, an oil and gas lease does not transfer ownership of oil and gas mineral. *See Swiss Oil v. Hupp, supra.* A coal lease, on the other hand, is sometimes referred to as being tantamount to a conveyance of the coal. As stated in *Swiss Oil*, the "holder of the coal lease is the same as the owner of the land." *Id.* Thus, under the coal tax statute, the lessee "owns the coal" and thus is the taxpayer. *See* KRS § 143.010(5). Under the tax statute for gas, the lessor "owns" the natural resource and, in certain circumstances, may be a taxpayer. KRS § 143A.010(4).

Even if a gas lessee were deemed to be the sole taxpayer under the gas severance tax statute (KRS 143A.010 *et seq.*), that would simply mean that the lessee is responsible if the taxes are not remitted to the Commonwealth. The taxing statutes do not dictate the allocation of taxes under the agreements of private parties. That allocation is addressed by the parties' lease and the application of the "at-the-well" rule.

VII. NOT PERMITTING THE DEDUCTION OF SEVERANCE TAXES (OR ONLY PERMITTING DEDUCTION OF SEVERANCE TAXES AND NOT PROCESSING) WOULD RESULT IN A WINDFALL TO THE LESSOR

By severing the gas, preparing it and transporting it to market, the producer has added value that increases the wellhead price for the lessor. Kentucky courts have long recognized that "there is seldom, if ever a market at the place of production." *Cumberland*, 15 S.W.2d at 284. The court recognized that costs undertaken after the gas left the well added value which is reflected in a higher sales price than what could be obtained at-the-well. To charge the lessee alone for these costs when the industry has relied upon the majority "at-the-well" rule to deduct post production costs would provide a windfall to the lessor who gets the benefit of a higher market price while lessee bears

the entire brunt of the cost to obtain a higher price. The "at-the-well" rule encourages lessees to take steps necessary to increase the value of the gas, which benefits the lessor. Any other rule would discourage producers from making that effort.

CONCLUSION

Kentucky law is clear that producers and landowners must each bear their proportionate share of post-production costs where royalties are required to be paid based on the value of the product "at-the-well." Severance tax is a post-production cost, and it should be borne by both parties. As *amicus curiae*, KOGA urges the Court to not disturb longstanding industry practice in the allocation of severance taxes as post-production costs to arrive at a value of gas "at-the-well."

Respectfully Submitted,

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