



STATE OF ARKANSAS  
**BUREAU OF  
LEGISLATIVE RESEARCH**

C.1.c

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***Claims Review/Litigation Reports Oversight Subcommittee  
of the Arkansas Legislative Council  
Claims Subcommittee of the Joint Budget Committee  
Statement of Redaction of Confidential Information***

Style of Case: Southwestern Energy Company, Successor to SWN Production (Arkansas) LLC v. Jim Hudson, in his Official Capacity as Secretary of the Department of Finance and Administration of the State of Arkansas, Case No. 60CV-23-9396, in the Circuit Court of Pulaski County, Arkansas

Docket Number: 60CV-23-9396

Type of Matter (please circle one):

Claims Review

Litigation Reports Oversight

As indicated by my signature below:

- I acknowledge that all documents submitted to the Subcommittee may be considered a public record pursuant to Arkansas Code § 25-19-103(7)(A) and may be published or disseminated by the Subcommittee for purposes of its consideration.
- I further acknowledge that it is my responsibility to review each document submitted to the Subcommittee and make any necessary redactions.
- I certify that I have reviewed each document submitted herein and have redacted any information in which an individual may be considered to have a reasonable expectation of privacy under state or federal law or that is considered confidential and required to be redacted under state or federal law.

/s/ Bradley B. Young  
Signature

Bradley B. Young  
Name

Revenue Legal Counsel,  
Department of Finance and Administration  
Title and Agency

August 1, 2025  
Date



State of Arkansas  
Bureau of  
Legislative Research

Marty Garrity, Director  
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## State Agency Litigation Notification Form

*Dear Agency Director:*

*Arkansas Code § 10-3-312 requires that any agency or institution that is not represented by the Attorney General shall notify the Director of the Bureau of Legislative Research of pending litigation so that the appropriate legislative committee may "determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter."*

*In order to submit a report regarding pending litigation pursuant to Arkansas Code § 10-3-312, please complete the following form for each pending lawsuit, along with a cover letter to the Director of the Bureau of Legislative Research, and submit to [desikans@blr.arkansas.gov](mailto:desikans@blr.arkansas.gov).*

DATE REPORTING:	
Agency:	Phone:
E-mail:	Contact:
1. STYLE OF THE CASE BEING LITIGATED	
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)	
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED	
3A. OTHER DESCRIPTION INFORMATION	
Docket Number	
Date Filed	
Defendant	
Defendant Attorney	
Plaintiff	
Plaintiff Attorney	
4. ANY OTHER RELEVANT INFORMATION	
4A. OTHER RELEVANT INFORMATION	
Case History	
Relief Sought	
Current Status	

## A.C.A. § 10-3-312

Current through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 10 General Assembly
- Chapter 3 Committees
- Subchapter 3-- Legislative Council

### 10-3-312. NOTIFICATION OF LAWSUITS AFFECTING STATE.

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- (a) In order that the General Assembly may take whatever steps it deems necessary concerning lawsuits which may affect the State of Arkansas, its officials, or its financial resources:
  - (1) The Attorney General shall notify the Director of the Bureau of Legislative Research who is the Executive Secretary to the Legislative Council as soon as possible after the Attorney General becomes involved in such litigation;
  - (2) **When any state agency or any entity which receives an appropriation of funds from the General Assembly becomes involved in litigation without representation by the Attorney General, the director or administrative head of the agency shall notify the Director of the Bureau of Legislative Research as soon as possible.**
- (b) The notice given by the Attorney General or by the director or administrative head of a state agency to the Director of the Bureau of Legislative Research shall include the style of the case being litigated, the identity of the tribunal before which the matter has been filed, a brief description of the issues involved, and other information that will enable the Legislative Council or the Joint Budget Committee to determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter.
- (c) Upon receipt of the notice, the Director of the Bureau of Legislative Research shall during the interim between legislative sessions transmit a copy of the notice to the cochair of the Legislative Council and to the cochair of the Joint Budget Committee during legislative sessions in order that those committees may schedule that matter upon their respective agendas at the earliest possible date.
- (d) During the interim between legislative sessions, the Legislative Council shall determine, and during legislative sessions the Joint Budget Committee shall determine, whether the General Assembly has an interest in the litigation and, if so, take whatever action deemed necessary to protect the General Assembly's and the state's interest in that matter.

### HISTORY

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Acts 1987, No. 798, §§ 1, 2.

Arkansas Code of 1987 Annotated Official Edition  
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A.C.A. § 10-3-312 (Lexis Advance through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission)

## MEMORANDUM

TO: Arkansas Legislative Council  
Litigation Reports Oversight Subcommittee  
Sen. Jim Dotson, Co-Chair  
Rep. DeAnn Vaught, Co-Chair

FROM: Brad Young, Litigation Manager  
Office of Revenue Legal Counsel  
Arkansas Department of Finance & Administration

DATE: August 1, 2025

RE: *Southwestern Energy Company, Successor to SWN Production (Arkansas) LLC v. Jim Hudson, in his Official Capacity as Secretary of the Department of Finance and Administration of the State of Arkansas*, Case No. 60CV-23-9396, in the Circuit Court of Pulaski County, Arkansas

REQUEST FOR REVIEW AND APPROVAL OF SETTLEMENT BY  
THE LEGISLATIVE COUNCIL OF THE ARKANSAS GENERAL ASSEMBLY  
Ark. Code Ann. § 10-3-312(d)

## SETTLEMENT AGREEMENT

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SWN filed a series of natural gas severance tax refund claims in the following amounts: (1) \$2,929,069.16 for the tax period October 2014 through September 2017; and (2) \$665,509.86 for the tax period October 2017 through June 2018. The Department denied a total of \$1,229,305.17 of the requested refunds. SWN appealed to the Office of Hearings and Appeals, which sustained the refund claim denials. This litigation ensued.

The parties attended mediation on June 5, 2025 and reached a mediated settlement. A copy of the settlement agreement is attached. The Department has agreed to refund a total of \$850,000.00.

The parties request that this matter be placed on the Legislative Council's agenda for review at the earliest possible date.

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of June 30, 2025 by and between Jim Hudson, in his official capacity as Secretary of the Arkansas Department of Finance and Administration (the "Department") and Southwestern Energy Company, Successor to SWN Production (Arkansas) LLC ("SWN") (collectively, the "parties"). SWN is the plaintiff, and the Department is the defendant, in Case No. 60CV-23-9396, *Southwestern Energy Company, Successor to SWN Production (Arkansas) LLC v. Jim Hudson, in his Official Capacity as Secretary of the Arkansas Department of Finance and Administration*, in the Circuit Court of Pulaski County, Arkansas (the "lawsuit"). The terms of this Agreement are authorized by law, including Ark. Code § 26-18-705(a) of the Arkansas Tax Procedure Act.

1. In full and final settlement of SWN's natural gas severance tax refund claims for the following tax periods: (a) October 1, 2014 through April 30, 2017; (b) May 1, 2017 through September 30, 2017; and (c) October 1, 2017 through June 30, 2018 (collectively, the "tax periods at issue"), the Department will issue a final refund to SWN, made payable to "Expand Energy Corporation," which is the successor in interest to SWN, in the amount of \$850,000.00, due by December 31, 2025. If not paid by December 31, 2025, interest begins accruing on January 1, 2026 on the principal amount of \$850,000.00 at an annual rate of 10%. If paid by December 31, 2025, no interest will accrue on the principal.

2. Upon receipt of payment by SWN, each party will fully, finally, and forever waive, discharge, and release all claims against the opposing party with regard to SWN's natural gas severance tax refund claims for the tax periods at issue. In addition, upon receipt of payment by SWN, each party will forever waive, discharge, and release all claims against the opposing party for interest related to SWN's natural gas severance refund claims for the tax periods at issue, except as provided in paragraph (1) of this Agreement.

3. Within ten (10) business days of receipt of payment, SWN will dismiss the lawsuit with prejudice, with each party bearing that party's own attorneys' fees and costs. The parties shall split the cost of mediation in equal parts.

4. This Agreement will be submitted for approval to the Arkansas Legislative Council. The parties agree to work cooperatively and to use their best efforts to secure approval from the Legislative Council. The parties understand and agree that such legislative approval is a condition precedent to the enforceability of this Agreement. Pursuant to Ark. Code § 26-18-303(b)(5), SWN authorizes disclosure of this Agreement as may be required to obtain approval from the Legislative Council.

5. The parties understand and agree that this is a compromise settlement of disputed claims. Nothing in the terms of this Agreement constitutes an admission of liability or fault by either party.

6. This Agreement will become effective immediately upon approval by the Legislative Council.

7. Each party recognizes that this is a legally binding contract and acknowledges and agrees that it has had the opportunity to consult with legal counsel of its choice. In any

construction to be made of this Agreement, the parties agree that the Agreement shall not be construed against the party who drafted it. The terms of this Agreement are contractual and are not a mere recital.

8. This Agreement shall be binding upon and inure to the benefit of all successors and assigns, and all parent, subsidiary, and affiliated corporations, partnerships, and limited liability companies of any and all named parties to this Agreement.

9. This Agreement constitutes the entire agreement of the parties and amends and replaces, in its entirety, the Mediation Settlement Agreement executed by the parties on June 4, 2025. This Agreement may not be altered, superseded, or otherwise modified except in writing signed by both parties.

10. If any provision of the Agreement is held illegal, invalid, or unenforceable in a legal action to enforce its terms or in any other action, all other provisions shall remain in full force and effect. The illegal, invalid, or unenforceable provision shall be modified to the extent necessary to render the remaining provisions enforceable.

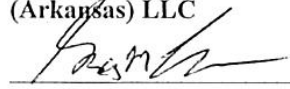
11. The Agreement may be executed in multiple counterparts (including execution by facsimile), each of which shall be deemed an original, and all of which together shall constitute one agreement.

12. The Agreement shall be deemed to have been drafted in accordance with the statutes and laws of the State of Arkansas. In the event of any disagreement or litigation arising under the Agreement, such disagreement or litigation shall be decided in accordance with the statutes and laws of the State of Arkansas, without regard to conflicts of law principles. Exclusive venue of any such litigation shall be in a court having jurisdiction in Arkansas.

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SIGNED:

Southwestern Energy Company,  
Successor to SWN Production  
(Arkansas) LLC

  
\_\_\_\_\_

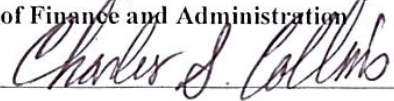
By: Gregory M. Larson

Title: VP - Accounting & Controller

Date: 7-31-25



Jim Hudson, in his official capacity  
as Secretary of the Arkansas Department  
of Finance and Administration



By: Charles S. Collins

Title: Commissioner of Revenue  
Arkansas Department of Finance and  
Administration

Date: 8/1/2025



<p><b>ELECTRONICALLY FILED</b>  Pulaski County Circuit Court  Terri Hollingsworth, Circuit/County Clerk  2024-Mar-29 12:11:42  60CV-23-9396  C06D16 : 63 Pages</p>
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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION**

**SOUTHWESTERN ENERGY COMPANY, SUCCESSOR  
TO SWN PRODUCTION (ARKANSAS) LLC**

**PLAINTIFF**

**VS.**

**NO. 60CV-23-9396**

**JIM HUDSON, in his official capacity  
as SECRETARY OF THE DEPARTMENT  
OF FINANCE AND ADMINISTRATION  
OF THE STATE OF ARKANSAS**

**DEFENDANT**

**FIRST AMENDED COMPLAINT**

Plaintiff Southwestern Energy Company, successor to SWN Production (Arkansas) LLC, for its first amended complaint against Jim Hudson, in his official capacity as Secretary of the Department of Finance and Administration of the State of Arkansas (the “Department”), states as follows:

**I. PARTIES, JURISDICTION, AND VENUE**

1. This action is brought pursuant to the provisions of the Arkansas Tax Procedure Act, Ark. Code Ann. §§ 26-18-101 et seq., and particularly Ark. Code § 26-18-406(b)(1) and Ark. Code § 26-18-507(e)(3).
2. Plaintiff is a corporation formed under the laws of the State of Delaware.
3. Defendant Jim Hudson is the Secretary of the Department of Finance and Administration of the State of Arkansas and is sued in his official capacity pursuant to Ark. Code Ann. § 26-17-304(a)(1)(A)(ii).

4. Jurisdiction and venue for this action are vested in this Court pursuant to Ark. Code Ann. § 26-18-406(c) and 16-60-104(3)(A).

5. Plaintiff has timely filed this complaint pursuant to Ark. Code Ann. § 26-18-406 and has exhausted all available and required administrative remedies.

## II. FACTS

6. Between October 1, 2014, and June 30, 2018, SWN Production (Arkansas) LLC was a producer of natural gas and natural gas liquids in the State of Arkansas.

7. As to the refund claims at issue in this case, Southwestern Energy Company is the successor in interest to SWN Production (Arkansas) LLC.

8. Southwestern Energy Company was a parent company of SWN Production (Arkansas) LLC during the period at issue.

9. However, after the period at issue, SWN Production (Arkansas) LLC was acquired by Flywheel Energy Operating, LLC.

10. The purchase agreement between Southwestern Energy Company and Flywheel Energy Operating, LLC states that claims for tax refunds owed to SWN Production (Arkansas) LLC for periods prior to the sale belong to Southwestern Energy Company.

11. In this first amended complaint, Southwestern Energy Company and SWN Production (Arkansas) LLC are collectively referred to as “Plaintiff.”

12. In order to get the gas to market, Plaintiff rented, designed, purchased, and installed pieces of equipment necessary and essential for the gas to be delivered to the purchaser and to meet purchaser specifications.

13. On August 31, 2020, Plaintiff submitted to the Department a claim for refund of Arkansas Natural Gas Severance Tax for the period October 1, 2017 through June 30, 2018 (“the first period at issue”).

14. Plaintiff claimed a refund of \$665,509.86 in tax based upon previously unclaimed or under-claimed marketing cost deductions, consisting of \$535,216.92 associated with qualifying operating expenses and \$130,292.94 related to intangible depreciation.

15. On January 19, 2021, the Department issued a Summary of Findings approving the refund claim for the first period at issue in part.

16. However, the Department denied \$3,073.92 due to “accounting discrepancies” and \$130,314.15 related to intangible depreciation and investments.

17. Plaintiff timely protested the partial denial on May 4, 2021.

18. After holding a hearing on the protest and the claim for refund, the Administrative Law Judge issued an Administrative Decision dated November 21, 2022, sustaining the denial of the claim for refund. A true and correct copy of that Administrative Decision is attached as “Exhibit 1” to this first amended complaint.

19. Plaintiff did not request revision of the Administrative Decision, which became final twenty days following issuance pursuant to Ark. Code Ann. § 26-18-405.

20. On December 13, 2017, Plaintiff submitted to the Department a claim for refund of Arkansas Natural Gas Severance Tax for the period October 1, 2014 through April 30, 2017 (“the second period at issue”).

21. On February 14, 2018, Plaintiff submitted to the Department a claim for refund of Arkansas Natural Gas Severance Tax for the period May 1, 2017 through September 30, 2017 (“the third period at issue”).

22. The claims for refund for the second and third periods at issue were consolidated by the Department.

23. On January 3, 2019, the Department issued a Summary of Findings approving the refund claims for the second period at issue and the third period at issue, in part.

24. However, the Department denied \$1,095,917.10 related to intangible depreciation and investments and cost of capital or return on investment. The Department’s denial is attached as “Exhibit 2” to this first amended complaint.

25. Plaintiff timely protested the denial of the claims for refund for the second period at issue and the third period at issue on February 19, 2019.

26. After holding a hearing on the protest and the claims for refund, the Administrative Law Judge issued an Administrative Decision dated May 4, 2020, sustaining the denial of the claim for refund. A true and correct copy of that Administrative Decision is attached as “Exhibit 3” to this first amended complaint.

27. Plaintiff timely requested a revision of the Administrative Decision on May 22, 2020.

28. The Commissioner of Revenue denied Plaintiff’s request for revision on January 23, 2024.

### III. CAUSES OF ACTION

29. Pursuant to Ark. R. Civ. P. 10(c), Plaintiff adopts and incorporates by reference the allegations of the preceding paragraphs of this first amended complaint as if set forth verbatim in this paragraph.

30. Ark. Code Ann. § 26-58-107 imposes a privilege or license tax called the severance tax on each producer of natural resources.

31. Ark. Code Ann. § 26-58-111(5) imposes variable tax rates on the “market value of the natural gas severed within the State of Arkansas.” “New discovery gas,” “high-cost gas,” and “marginal gas” are taxed at a reduced rate, whereas other natural gas is taxed at 5% of market value.

32. Ark. Code Ann. § 26-58-101(10) defines “market value” for purposes of the imposition of severance tax on natural gas as follows: “Market value’, when used in reference to the rate of severance tax on natural gas, means the producer’s actual cash receipts from the sale of natural gas to the first purchaser less the actual costs to the producer of dehydrating, treating, compressing, and delivering the gas to the purchaser.”

33. Tax Rule 2008-4 provides further information regarding the imposition of severance tax and the deduction of “marketing costs” from the market value of gas.

34. Ark. Admin. Code 006.05.214-NG-3(G) provides: “Market Value’ means the producer’s actual cash receipts from the sale of natural gas to the first purchaser less the actual costs to the producer of dehydrating, treating, compressing, and delivering the gas to the first purchaser.”

35. Ark. Admin. Code 006.05.214-NG-4 (“Determination of Market Value and Marketing Costs”) provides, in relevant part: “A. Producers of natural gas who incur marketing costs in connection with the sale of natural gas production may deduct such costs from the actual cash receipts when computing the market value subject to the severance tax. B. Marketing costs are reasonable and necessary non-production costs incurred by the producer to enable the transport of gas from the well to the first purchaser, including: 1. Costs for compressing the gas sold to the first purchaser; 2. Costs for dehydrating the gas sold to the first purchaser; 3. Costs for treating the gas sold to the first purchaser; 4. Costs for delivering the gas sold to the first purchaser.”

36. Ark. Admin. Code 006.05.214-NG-4(B) further provides: “Marketing costs do not include: 1. Costs incurred in producing the gas; 2. Costs incurred in the normal lease separation of the oil, gas, or condensate; or 3. Insurance premiums on the marketing facility.”

37. Ark. Admin. Code 006.05.214-NG-4(D) provides: “Marketing costs are determined by adding: 1. Charges for depreciation of the marketing facility being used, provided that, if the facility is rented, the actual rental fee is added. 2. Costs of direct or allocated labor associated with the marketing facility. 3. Costs of materials, supplies, maintenance, repairs, and fuel associated with the marketing facility. 4. Ad valorem taxes paid on the marketing facility. 5. Charges for fees paid by the producer to any provider of dehydration, treating, compression, and/or delivery services as provided in NG-4.B.”

38. Ark. Admin. Code 006.05.214-NG-4(F) provides: “Whether a cost is deductible or not will often depend upon exactly how the item is used. If the cost is deductible, it must then be determined whether the item should be expensed or depreciated.”

39. In accordance with the authorities set forth above, the Department erroneously denied refunds for various expenses that qualify as marketing costs that are deductible from Taxpayer’s taxable receipts, such as the following.

40. Many of the expenses at issue were improperly rejected as deductible marketing costs solely because Plaintiff booked the expenses into “intangible” accounts.

41. The auditor allowed similar expenses as deductible marketing costs when they were booked into Lease Operating Expense (“LOE”) accounts in Taxpayer’s general ledger.

42. Differential treatment of such expenses was improper, in that the expenses qualify as marketing costs regardless of which general ledger accounts they were booked into.

43. Plaintiff’s use of intangible general ledger accounts was mandatory.

44. The Securities and Exchange Commission and Financial Accounting Standards Board require Plaintiff, and similarly situated companies, to classify expenses and other items based on United States Generally Accepted Accounting Principles (“GAAP”).



45. GAAP classifies numerous items of cost, including permitting, administrative, surveying, grading, digging, technical service, construction, fluids, chemicals shipping, and other similar costs, as “intangible” costs.

46. Such costs may be capitalized based on the company’s accounting method (either Full Cost or Successful Efforts), just like “tangible” costs.

47. GAAP specifically provides that the extraordinary costs incurred in bringing a well on to production for the first time be included with the well cost (i.e., intangible) rather than the lease operating costs.

48. These costs are primarily associated with the recapture of gas from frac fluids, and compression of gas for delivery to the purchaser.

49. If these costs were not incurred, the gas would have to have been vented or lost with the disposal of frac fluid.

50. GAAP provides that once “normal production” has been established, these same types of costs are thereafter considered lease operating costs.

51. As stated above, the same costs were allowed as marketing cost deductions when they were booked in LOE accounts.

52. During the administrative process, the Department argued that such expenses should be disallowed if they were incurred before the first production date reported to the Arkansas Oil & Gas Commission.

53. However, this formalistic approach to allowing or denying marketing cost deductions is incorrect.

54. The costs identified by Plaintiff as marketing costs, but incurred before the first production date, were necessary to put qualifying equipment and processes in place ahead of first production/sales of gas.

55. If Plaintiff had not incurred these expenses before commencement of production, then Plaintiff would have been unable to sell any gas.

56. In fact, no qualifying production costs and no other qualifying costs were identified and excluded from Plaintiff's marketing costs before the claim for refund was submitted.

57. Expenses were incurred in connection with "gas capture" equipment installed between the wellhead and production separator.

58. The Administrative Law Judge erroneously concluded that these items were production rather than marketing costs.

59. In fact, the gas capture systems allowed Plaintiff to capture and sell (*i.e.* "deliver") approximately 16,000 mcf per well of produced gas that otherwise would have been vented to the atmosphere or flared due to insufficient equipment.

60. The presence or absence of a gas capture system would not change the amount of gas produced from a well; however, it does change the amount of gas that is marketable.

61. This is the very definition of marketing costs.

62. Further, certain compression-related expenses were also disallowed by the Department as marketing costs.

63. Compression is expressly allowed to be included in marketing costs in Ark. Code Ann. § 26-58-101(10) and in Ark. Admin. Code 006.05.214-NG-4(B)(1).

64. The disallowed expenses were associated with rental costs for gas compressors and labor associated with the installation of such compressors.

65. In addition, certain gas gathering line expenses were disallowed by the Department as marketing costs.

66. Pipelines required to deliver gas to the first purchaser are explicitly allowed to be included in marketing costs in Ark. Code Ann. § 26-58-101(10) and in Ark. Admin. Code 006.05.214-NG-4(B)(4).

67. The relevant costs were incurred during the installation of flowlines and pipelines included in the gas gathering system used to deliver the gas to the first purchaser.

68. These intangible costs can be incurred disproportionately before the initial production of the well.

69. Therefore, the costs are capitalized to create a reasonable matching of costs with revenues.

70. If such costs were immediately expensed, in the absence of revenue, there would be a mismatch that would violate the most fundamental accounting concepts of matching expenses with revenue.

71. The engineering, permitting and grading for physical equipment needed to dehydrate, treat, compress, and deliver the gas to the purchaser cannot wait until the first month of production as suggested by the Department.

72. These are complex systems that require time to design and construct.

73. Therefore, GAAP requires capitalizing these intangible costs similar to the tangible cost for the compressors, dehydrators and pipe used for delivering the gas to the purchaser.

74. In other words, the requested costs associated with gas capture, compression, and gas gathering lines were necessary and essential to get the gas to market.

75. These costs are specifically allowed pursuant to Ark. Code Ann. § 26-58-101(10), as gas capture and gas gathering lines are associated with delivering the gas to the purchaser, and compression is required to meet purchaser specifications (and to assist with delivering the gas).

76. Taking away any one of those three components would render Plaintiff unable to market the gas.

77. Further, the intangible costs should be depreciated to create a reasonable matching of costs with revenues, and in accordance with GAAP.

78. However, as outlined in Ark. Admin. Code 006.05.214-NG-4(F), once costs are determined to be deductible, “it must then be determined whether the item should be expensed or depreciated.”

79. If the intangible costs at issue cannot be depreciated, Plaintiff should be able to expense these allowable intangible costs against the earliest available natural gas taxable value.

80. “Market value,” as defined in the statute, means the producer’s actual cash receipts from the sale of natural gas to the first purchaser less the actual costs to the producer of dehydrating, treating, compressing, and delivering the gas to the purchaser. Ark. Code Ann. § 26-58-101(10).

81. The actual costs to the producer of dehydrating, treating, compressing, and delivering the gas to the purchaser includes the “intangible” cost to the producer for the dehydrating, treating, compressing, and delivering the gas without regard to whether they were expensed or capitalized.

82. In relation to the second and third periods at issue, Plaintiff further contends that interest expense it incurs in connection with other qualifying marketing costs is, in and of itself, deductible as a marketing cost.

83. Such interest expense is variably identified as “return on investment” or “cost of capital.”

84. These terms are synonymous and refer to actual interest expense associated with marketing gas.

85. Plaintiff, the producer of natural gas, incurs real interest expense in the same manner as an individual buying a car or a house.

86. Each car or house payment includes a partial payment of the principal loan amount, and a payment of interest.

87. As with a house payment, early in the term of a loan, most of the cash payment is for interest and a smaller fraction is applied to principal.

88. Therefore, a producer can have a high percentage of interest expense early in the project.

89. Both the principal and interest are “cash” expenses.

90. Plaintiff’s debt is not structured in such a way that it carries a note for each piece of equipment or supply item that it buys.

91. Rather, it carries several kinds of debt and generally recognizes interest expense on those debts as a whole.

92. In the present case, Plaintiff used a reasonable 6% to represent amortization of the cost of borrowing funds for equipping and producing the well (i.e., approximately the London Interbank Offered Rate (LIBOR) plus 4%).

93. In summary, Plaintiff’s borrowing cost, for both “tangible” and “intangible” purchases, is a reasonable “actual cost” of dehydrating, treating, compressing, and delivering gas to the purchaser.

94. Accordingly, it qualifies as a deductible marketing cost pursuant to Ark. Code § 26-58-101(10).

95. Plaintiff is therefore entitled to recover the severance tax it paid, and the decision and assessment were in error because such tax was not refunded.

96. All requested refunds, together with interest, should be paid.

WHEREFORE, plaintiff Southwestern Energy Company, successor to SWN Production (Arkansas) LLC prays for judgment awarding it the following relief:

- (a) A refund of taxes paid by Plaintiff in the sum of \$130,314.15, relating to the first period at issue;
- (b) A refund of taxes paid by Plaintiff in the sum of \$1,095,917.10 relating to the second period at issue and the third period at issue;
- (b) Interest on the refund in accordance with Ark. Code Ann. § 26-18-508, or any other applicable statute, and applicable interest included in the assessments, at the highest rate provided by applicable law;
- (c) An award of attorneys' fees and costs;
- (d) A reversal of the Administrative Decisions; and
- (e) Such other and further relief as the Court deems appropriate.

Respectfully submitted:

WRIGHT, LINDSEY & JENNINGS LLP  
 200 West Capitol Avenue, Suite 2300  
 Little Rock, Arkansas 72201-3699  
 (501) 371-0808  
 FAX: (501) 376-9442  
 E-MAIL: mthompson@wlj.com

By: /s/ Michael A. Thompson  
 Michael A. Thompson (2010146)

*Attorneys for Plaintiff*  
*Southwestern Energy Company, successor*  
*to SWN Production (Arkansas) LLC*



CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2024, I electronically filed the foregoing with the Clerk of the Court using the Arkansas Judiciary Electronic Filing System, which shall send notification of such filing to the following:

- Brad Young, brad.young@dfa.arkansas.gov
- Keith Linder, keith.linder@dfa.arkansas.gov
- Brooks White, brooks.white@dfa.arkansas.gov

/s/ Michael A. Thompson

Michael A. Thompson

<b>ELECTRONICALLY FILED</b> Pulaski County Circuit Court Terri Hollingsworth, Circuit/County Clerk 2024-Apr-16 11:12:27 60CV-23-9396 C06D16 : 14 Pages
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**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
CIVIL DIVISION**

**SOUTHWESTERN ENERGY COMPANY, SUCCESSOR  
TO SWN PRODUCTION (ARKANSAS) LLC**

**PLAINTIFF**

**vs.**

**CASE NO.: 60CV-23-9396**

**JIM HUDSON, IN HIS OFFICIAL CAPACITY  
AS SECRETARY OF THE DEPARTMENT  
OF FINANCE AND ADMINISTRATION  
OF THE STATE OF ARKANSAS**

**DEFENDANT**

**ANSWER**

Now comes Jim Hudson, in his official capacity as Secretary of the Arkansas Department of Finance and Administration (“Department”), and files this answer to plaintiff’s First Amended Complaint.

The Department states at the outset that it has filed a Partial Motion to Dismiss and Supporting Brief as to the claim for the period of October 1, 2017 through June 30, 2018 (“the first period at issue”). The Department files this answer subject to, and without waiving, the Partial Motion to Dismiss and Supporting Brief.

1. In response to the allegations of paragraph 1, the Department states that it is an assertion of law to which no response is necessary, but deny to the extent contrary to the applicable law.

2. The Department lacks knowledge sufficient to form a belief as to the truth of paragraph 2 and therefore denies same.

3. In response to the allegations of paragraph 3, the Department admits that Jim Hudson is the Secretary of the Department. The remainder of paragraph 3 consists of an assertion of law to which no response is necessary, but the Department denies to the extent contrary to the applicable law.

4. In response to the allegations of paragraph 4, the Department states that it is an assertion of law to which no response is necessary, but denies to the extent contrary to the applicable law.

5. With respect to plaintiff's refund claim for the first period at issue, the Department denies paragraph 5 and incorporates by reference the Department's motion to dismiss. With respect to the plaintiff's refund claims for tax period October 1, 2014 through April 30, 2017 ("the second period at issue") and tax period May 1, 2017 through September 30, 2017 ("the third period at issue"), the Department admits the allegations in paragraph 5.

6. The Department admits the allegations of paragraph 6.

7. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 7 and therefore denies same.

8. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 8 and therefore denies same.

9. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 9 and therefore denies same.

10. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 10 and therefore denies same.

11. The Department admits the allegations of paragraph 11.

12. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 12 and therefore denies same.

13. Subject to the motion to dismiss, the Department admits the allegations of paragraph 13.

14. Subject to the motion to dismiss, in response to the allegations of paragraph 14, the Department admits that in plaintiff's August 31, 2020 refund claim, plaintiff requested a total refund of \$665,509.86, and that \$355,216.92 of that amount was "associated with qualifying operating expenses," and that \$130,292.94 was "associated with intangible depreciation."

15. Subject to the motion to dismiss, the Department admits that it denied \$133,388.07 of the claimed refund. The Department denies the remaining allegations of paragraph 15.

16. Subject to the motion to dismiss, the Department admits the allegations of paragraph 16.

17. Subject to the motion to dismiss, the Department admits the allegations of paragraph 17.

18. Subject to the motion to dismiss, the Department admits the allegations of paragraph 18.

19. Subject to the motion to dismiss, in response to the allegations of paragraph 19, the Department admits that plaintiff did not request revision of the administrative decision. The Department denies that the Administrative Decision "became final twenty days following issuance pursuant to Ark. Code Ann. § 26-18-405."

20. The Department admits the allegations of paragraph 20.

21. The Department admits the allegations of paragraph 21.

22. The Department admits the allegations of paragraph 22.

23. The Department admits the allegations in paragraph 23.

24. In response to the allegations of paragraph 24, the Department states that the summary of findings document speaks for itself, and denies to the extent contrary to the content of the document.

25. The Department admits the allegations in paragraph 25.

26. The Department admits the allegations in paragraph 26.

27. The Department admits the allegations in paragraph 27.

28. The Department admits the allegations in paragraph 28.

29. The Department incorporates paragraphs 1-28 above by reference.

30. In response to the allegations of paragraph 30, the Department states that the text of Ark. Code § 26-58-107 speaks for itself and denies to the extent contrary to the text.

31. In response to the allegations of paragraph 31, the Department states that the text of Ark. Code § 26-58-111(5) speaks for itself and denies to the extent contrary to the text.

32. In response to the allegations of paragraph 32, the Department states that the text of Ark. Code § 26-58-101(10) speaks for itself and denies to the extent contrary to the text.

33. In response to the allegations of paragraph 33, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

34. In response to the allegations of paragraph 34, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

35. In response to the allegations of paragraph 35, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

36. In response to the allegations of paragraph 36, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

37. In response to the allegations of paragraph 37, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

38. In response to the allegations of paragraph 38, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

39. Subject to the motion to dismiss, the Department denies the allegations of paragraph 39.

40. Subject to the motion to dismiss, the Department denies the allegations of paragraph 40.

41. Subject to the motion to dismiss, the Department denies the allegations of paragraph 41.

42. Subject to the motion to dismiss, the Department denies the allegations of paragraph 42.

43. In response to the allegations of paragraph 43, the Department states that the allegation that Plaintiff's use of intangible general ledger accounts "was mandatory" is vague and unclear and therefore denies same. The Department further states that any requirements of any governmental or other regulatory bodies speak for themselves and denies to the extent contrary to those requirements.

44. In response to the allegations of paragraph 44, the Department states that the requirements of the Securities and Exchange Commission and the Financial Accounting Standards Board speak for themselves and denies to the extent contrary to those requirements.

45. In response to the allegations of paragraph 45, the Department states that the requirement of GAAP speaks for itself and denies to the extent contrary to its requirements.

46. In response to the allegations of paragraph 46, the Department states that the requirement of GAAP speaks for itself and denies to the extent contrary to that requirement.

47. In response to the allegations of paragraph 47, the Department states that the requirement of GAAP speaks for itself and denies to the extent contrary to that requirement.

48. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 48 and therefore denies same. The Department further denies because the phrase “these costs” is vague and unclear as to what specific costs are being referenced.

49. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 49 and therefore denies same. The Department further denies because the phrase “these costs” is vague and unclear as to what specific costs are being referenced.

50. In response to the allegations of paragraph 50, the Department states that the requirement of GAAP speaks for itself and denies to the extent contrary to that requirement.

51. Subject to the motion to dismiss, the Department denies paragraph 51 and states that the phrase “the same costs” is vague and unclear as to what specific costs are being referenced.

52. In response to the allegations of paragraph 52, the Department states that the record of the administrative proceeding speaks for itself and denies to the extent contrary to the record.

53. Subject to the motion to dismiss, paragraph 53 consists of a conclusion of law to which no response is necessary, but the Department denies in any event that it improperly disallowed any deduction.

54. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 54 and therefore denies same. The Department further denies because the phrase “[t]he costs identified by plaintiff as marketing costs, but incurred before the first production date” is vague and unclear as to what specific costs are being referenced.



55. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 55 and therefore denies same. The Department further denies because the phrase “these expenses” is vague and unclear as to what specific expenses are being referenced.

56. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 56 and therefore denies same. The Department further denies because the phrases “qualifying production costs” and “qualifying costs” are vague and unclear as to what specific costs are being referenced. The Department further denies because the allegation that no such costs “were identified and excluded from Plaintiff’s marketing costs” is vague and unclear as to what is meant.

57. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 57 and therefore denies same.

58. Subject to the motion to dismiss, the Department states that paragraph 58 consists of a conclusion of law to which no response is necessary, but the Department denies in any event that the Administrative Law Judge committed error.

59. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 59 and therefore denies same.

60. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 60 and therefore denies same.

61. In response to the allegations of paragraph 61, the Department states that the definition of marketing costs speaks for itself, and denies to the extent contrary to the legal definition of marketing costs under Arkansas law. The Department further denies because the statement that “this” is the very definition of marketing costs is vague and unclear.

62. Subject to the motion to dismiss, in response to the allegations of paragraph 62, the Department admits that certain expenses that Plaintiff claimed in the administrative proceedings were related to compression were disallowed.

63. In response to the allegations of paragraph 63, the Department states that the texts of Ark. Code § 26-58-101(1) and Natural Gas Severance Tax Rule 2008-4 speak for themselves, and denies to the extent contrary to those texts.

64. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 64 and therefore denies same.

65. Subject to the motion to dismiss, the Department denies the allegations of paragraph 65.

66. In response to the allegations of paragraph 66, the Department states that the texts of Ark. Code § 26-58-101(10) and Natural Gas Severance Tax Rule 2008-4 speak for themselves, and denies to the extent contrary to same.

67. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 67 and therefore denies same. The Department further denies because the phrase “[t]he relevant costs” is vague and unclear as to what specific costs are being referenced.

68. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 68 and therefore denies same. The Department further denies because the phrase “[t]hese intangible costs” is vague and unclear as to what specific costs are being referenced.

69. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 69 and therefore denies same. The Department further denies because the phrase “the costs” is vague and unclear as to what specific costs are being referenced. The Department

further states that applicable accounting principles speak for themselves, and denies to the extent contrary to such principles.

70. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 70 and therefore denies same. The Department further denies because the phrase “such costs” is vague and unclear as to what specific costs are being referenced. The Department further states that applicable accounting principles speak for themselves, and denies to the extent contrary to such principles.

71. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 71 and therefore denies same. The Department further denies that it “suggested” that “engineering, permitting and grading for physical equipment needed to dehydrate, treat, compress, and deliver the gas to the purchaser could wait until the first month of production.”

72. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 72 and therefore denies same.

73. In response to the allegations of paragraph 73, the Department states that the requirements of GAAP speak for themselves, and therefore denies to the extent contrary to those requirements.

74. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 74 and therefore denies same. The Department further denies because the phrase “the requested costs associated with gas capture, compression, and gas gathering lines” is vague and unclear as to what specific costs are being referenced.

75. In response to the allegations of paragraph 75, the Department states that the text of Ark. Code § 26-58-101(10) speaks for itself, and the Department denies to the extent contrary to the text.

76. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 76 and therefore denies same. The Department further denies because the phrase “[t]aking away any one of those three components” is vague and unclear as to what is meant.

77. In response to the allegations of paragraph 77, the Department states that the requirements of GAAP speak for themselves, and denies to the extent contrary to its requirements.

78. In response to the allegations of paragraph 78, the Department states that the text of Natural Gas Severance Tax Rule 2008-4 speaks for itself and denies to the extent contrary to the text.

79. The Department states that paragraph 79 states a conclusion of law and therefore no response is required, but denies to the extent contrary to the applicable law.

80. In response to the allegations of paragraph 80, the Department states that the text of Ark. Code. § 26-58-101(10) speaks for itself, and denies to the extent contrary to the text.

81. The Department states that paragraph 81 states a conclusion of law and therefore no response is required, but denies to the extent contrary to the applicable law.

82. In response to the allegations of paragraph 82, the Department acknowledges that Plaintiff contends interest expense it incurs in connection with other qualifying marketing costs is in and of itself deductible as a marketing cost. The Department further states that Plaintiff’s contention is an assertion of law instead of an allegation of fact and therefore no response is required, but denies to the extent contrary to the applicable law.

83. The Department states that paragraph 83 states a conclusion of law and therefore no response is required, but denies to the extent contrary to the applicable law.

84. The Department states that paragraph 84 states a conclusion of law and therefore no response is required, but denies to the extent contrary to the applicable law.

85. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 85 and therefore denies same. The Department further denies because the phrase “in the same manner as an individual buying a car or a house” is vague and unclear.

86. The Department denies the allegations of paragraph 86. The Department further denies because the phrase “[e]ach car or house payment” is vague and unclear.

87. The Department denies the allegations of paragraph 87. The Department further denies because the statement, “early in the term of a loan, most of the cash payment is for interest and a smaller fraction is applied to principal” is vague and unclear.

88. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 88 and therefore denies same.

89. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 89 and therefore denies same. The Department further denies because the phrase “ ‘cash’ expenses” is vague and unclear.

90. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 90 and therefore denies same.

91. The Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 91 and therefore denies same.

92. Subject to the motion to dismiss, the Department lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 92 and therefore denies same.

93. Subject to the motion to dismiss, in response to the allegations of paragraph 93, the Department states that they are an assertion of law instead of an allegation of fact and therefore no response is required, but deny to the extent contrary to the applicable law.

94. Subject to the motion to dismiss, the Department denies the allegations of paragraph

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95. Subject to the motion to dismiss, the Department denies the allegations of paragraph

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96. Subject to the motion to dismiss, the Department denies the allegations of paragraph

96.

97. The paragraph that begins with the word “WHEREFORE,” including its subparts, contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in the “WHEREFORE” paragraph and subparts and denies that plaintiff is entitled to the requested relief.

98. The Department denies all allegations not specifically admitted.

99. To the extent any of the headings in the complaint contain allegations that require response, the Department denies the allegations contained in those headings.

100. Subject to the motion to dismiss, with respect to plaintiff’s claims regarding the first period at issue, the Department asserts the affirmative defense of limitations.

101. All laws cited in the complaint speak for themselves, and the Department denies any characterization of those laws that goes beyond their text.

102. The Court should dismiss the plaintiffs’ claim for attorney’s fees pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure because the complaint fails to allege facts entitling the plaintiffs to attorney’s fees under Ark. Code Ann. § 26-18-406(e) or any other statute.

FOR THESE REASONS, Defendant, Jim Hudson, in his official capacity as Secretary of the Arkansas Department of Finance and Administration, prays that the Court dismiss the plaintiff’s

Amended Complaint in its entirety and for all other just and proper relief to which the Department may be entitled.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on April 16, 2024, I served a copy of the foregoing document on the following person(s) by electronic mail, United States mail, or the Court's electronic filing system:

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