



COURT FILE NUMBER **1801 – 16746**

COURT **COURT OF QUEEN’S BENCH OF ALBERTA**

JUDICIAL CENTRE **CALGARY**

PLAINTIFFS **ALTIUS ROYALTY CORPORATION, GENESEE ROYALTY LIMITED PARTNERSHIP and GENESEE ROYALTY GP INC.**

DEFENDANTS **HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and ATTORNEY GENERAL OF CANADA**

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Code Hunter LLP
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AMENDED this 19 day of Dec 2018 Pursuant to Rule 3.62
Dated the 19 day of Dec 2018

NOTICE TO DEFENDANTS

CLERK OF THE COURT

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

Introduction

1. This claim is brought as a result of the Defendants’ unlawful taking of the Plaintiffs’ property without compensation.
2. In 2014, the Plaintiffs acquired a royalty interest in the coal which is mined and used to fuel the Genesee Power Plant, long the source of Edmonton’s electricity.
3. The Defendants then maintained and held out their respective jurisdictions as safe investment environments, with reliable and consistent environmental policies with changes in the governing parties.
4. However, since 2015 the Defendants have acted, jointly and severally, to phase out traditional coal-fired electrical generation by 2030, with the result that the Plaintiffs have been deprived of their property.

- (a) the Government of Alberta paid the electrical generator which used the coal to cease generating coal-fired electricity; and
 - (b) the Government of Canada changed the regulatory framework, upon which the Plaintiffs relied, to prohibit traditional coal-fired electrical generation.
5. The Defendants have rendered the royalty interest on coal that was to be used for electrical generation of no value, in effect taking the Plaintiffs' property. This has resulted in loss and damage in the approximate amount of \$190,000,000.

Parties

6. The Plaintiff Genesee Royalty Limited Partnership ("**Genesee LP**") is a partnership formed and existing under Ontario law.
7. The Plaintiff Genesee Royalty GP Inc. ("**Genesee GP**") is a corporation formed and existing under Alberta law, and is the general partner of Genesee LP.
8. The Plaintiff Altius Royalty Corporation ("**Altius Royalty**") is a corporation formed and existing under Alberta law.
9. The Plaintiffs are part of the corporate family of Altius Minerals Corporation ("**Altius Minerals**"), which holds royalties in mines across Canada and in Brazil producing copper, zinc, nickel, cobalt, iron ore, potash and thermal (electrical) and metallurgical coal.
10. Altius Minerals was founded in 1997 and traded as a junior capital company on the Alberta Stock Exchange, and is now publicly listed on the Toronto Stock Exchange and headquartered in Newfoundland and Labrador. The majority of Altius Minerals' shareholders are individual and institutional investors seeking long-term capital appreciation and dividend income.
11. The Defendants are Her Majesty the Queen in Right of Alberta and the Attorney General of Canada, the Alberta and Canadian governments.

The Royalty Interest and Dedication of Coal to the Genesee Power Plant

12. Pursuant to an Arrangement Agreement dated 24 December 2013, on 28 April 2014:

- (a) Genesee LP acquired a royalty interest in the coal (thermal) underlying lands near and around Genesee, Alberta; and
 - (b) Altius Royalty purchased Genesee GP and the limited partners of Genesee LP for approximately \$251,000,000.¹
13. That coal is mined and used to fuel the Genesee Power Plant, which was constructed by Edmonton Power in 1980 and since then has generated electricity for the City of Edmonton and elsewhere in Alberta.
 14. The Genesee Coal Mine is currently the subject of a joint venture between Capital Power LP (successor to Edmonton Power) and Prairie Mines & Royalty ULC ("**Prairie Mines**").
 15. Genesee LP, Capital Power, and Prairie Mines acknowledged the dedication of the Genesee Coal Mine and production to the Genesee Power Plant and the parties' respective interests in the coal rights by a Second Amended and Restated Dedication and Unitization Agreement of 24 April 2014.
 16. That 24 April 2014 Second Amended and Restated Genesee Coal Mine Dedication and Unitization Agreement, as amended, provides as follows:

WHEREAS Capital Power is the owner and operator of the Genesee Power Plant between the north and south Genesee coal fields within the Permit Area;

AND WHEREAS the Energy Resources Conservation Board issued the Development Permit for the development of the Genesee Coal Mine for the purpose of fuelling the Genesee Power Plant;

AND WHEREAS predecessors to Capital Power, PMRL and the Joint Venture entered into an Original Dedication and Unitization Agreement August 7, 1980, pursuant to which they dedicated and unitized their respective interests in the Coal Rights set forth in Schedule "A" thereto to the Genesee Coal Mine for the purpose of fuelling the Genesee Power Plant;

AND WHEREAS upon this Agreement becoming effective Capital Power will be the owner or lessee of the interests in the Coal Rights set out in Part I of Schedule "A", PMRL and the Royalty Owner will collectively be the owners or lessees, as the case may be, of the interests in the Coal Rights set out in Part II Schedule "A", the Joint Venture will be the owner or lessee of the interests in the Coal Rights

¹ Altius Royalty is the successor by amalgamation to Altius Prairie Royalties Corp., the party which purchased Genesee GP and the limited partners of Genesee LP.

set out in Part III of Schedule "A", and Third Parties will be the owners or lessees of the interests in the Coal Rights set out in Part IV of Schedule "A";

AND WHEREAS Capital Power, PMRL and the Joint Venture have dedicated and unitized their respective interests in the Coal Rights as set forth in Schedule "A", and Royalty Owner acknowledges that its interests in the Coal Rights set forth in Schedule "A" have been dedicated and unitized, in each case to the Genesee Coal Mine for the purpose of fuelling the Genesee Power Plant;

...

2.1 Dedication of Coal Rights

Capital Power, PMRL and the Joint Venture hereby acknowledge the dedication to the Genesee Coal Mine of all of their respective interests in Coal Rights as set forth in Parts I, II and III of Schedule "A" to this Agreement. Royalty Owner hereby acknowledges the dedication to the Genesee Coal Mine of all of its interest in the PMRL Coal Rights (including the Royalty Interest).

The Parties acknowledge and agree that the Royalty Owner has a legal and beneficial interest in the PMRL Coal Rights in the Dedicated Area and as set forth in Part II of Schedule "A" to this Agreement in accordance with the terms of the Royalty Interest and that such legal and beneficial interest is dedicated to the Genesee Coal Mine hereunder.

...

2.3 Acquisition of Coal Rights in the Dedicated Area and Area of Mutual Interest

Any Coal Rights which are acquired in the Dedicated Area and the Area of Mutual Interest after the Effective Date shall be acquired and dedicated to the Genesee Coal Mine by the Joint Venture. The cost to acquire and retain ownership of these Coal Rights shall be considered as Construction Costs or Capital Additions and no royalties shall be payable thereon other than royalties payable to the Crown or to Third Parties.

...

5.1 Unitization of Coal and Effect of Unitization

Whenever Coal is produced from the Dedicated Area, such production shall be proportionately allocated to, and shall be conclusively deemed to have been produced from, the interests in Coal Rights of each of the Parties, in accordance with its respective Percentage Interest in the Coal, whether such production is or is not, in whole or in part, from the Coal Rights of such Party.

...

6.1 Royalties

The Joint Venture shall pay to PMRL the following royalties for its Percentage Interest (as determined in accordance with this Agreement, which for certainty, includes the Percentage Interest

attributed to the Royalty Owner) in each tonne of Coal mined from the Dedicated Area, subject to Section 6.3.

...

7.1 Term

The Original Dedication and Unitization Agreement and all of the terms thereof shall be effective from the Effective Date. The First Amended and Restated Dedication and Unitization Agreement shall be effective immediately after the transfer by the Royalty Owner of its Coal Rights, with the exception of the Royalty Interest, to 1814100 Alberta ULC. This Second Amended and Restated Dedication and Unitization Agreement shall be effective immediately after the closing of the Arrangement Agreement Transactions and shall continue in effect until all Recoverable Coal Reserves have been mined, or the Genesee Power Plant is permanently decommissioned or as terminated pursuant to this Agreement.

...

8.1 Termination of Agreement

This Agreement and all of the terms thereof including the dedication and unitization thereunder shall be terminated only in accordance with Section 7.1 of this Agreement or upon mutual agreement of Capital Power and PMRL. For certainty, the Parties acknowledge and agree that a termination of this Agreement does not constitute a termination of the Royalty Interest.

The Genesee Power Plant

17. The Genesee Power Plant has three operational units, known as G1, G2, and G3.
18. G1 and G2 were commissioned in 1994 and 1989, respectively, and have a combined capacity of 860 MW.
19. G3 is the first facility in Canada to use supercritical-combustion technology (greatly reducing CO₂ emissions), uses clean air technologies (significantly lowering NO_x and SO₂, and stopping 99.8% of particulate emissions), has a capacity of 516 MW, and came on stream in 2005.
20. In 2012, the Government of Canada unveiled regulations for new coal-fired plant emissions which provide for the end of life at various times for plants theretofore commissioned, and which also set stringent performance standards for new coal-fired electricity generation units – the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations, SOR/2012-167* (the “**Regulations**”).

21. The Genesee units complied with the Regulations, and were planned and constructed to supply Albertans with coal-fired electricity until 2044 in the case of G1, 2039 in the case of G2, and 2055 in the case of G3.

Joint Actions

22. In November and December 2015, the Defendants attended the 21st Conference of the Parties of the United Nations Framework Convention on Climate Change, which was held in Paris, France.
23. From this conference resulted the international Paris Agreement (the stated goal for which is to limit the rise in global temperatures at 1.5 to 2 °C above pre-industrial levels). In principle, this is to be achieved through nationally determined contributions and regular emissions-level reporting.
24. The Government of Canada ratified the Paris Agreement in October 2016, committing Canada to reducing greenhouse gas emissions by 30% from 2005 levels by 2030.
25. On or about 3 March 2016, Canada's First Ministers, which included those of the Defendants, issued the "Vancouver Declaration on Clean Growth and Climate Change", in which they resolved to develop a national framework to meet or exceed the emissions reduction goal contemplated by the Paris Agreement.
26. To that end, the First Ministers directed that reports be developed by intergovernmental working groups to identify options for action in four areas: clean technology, innovation, and jobs; carbon pricing mechanisms; specific mitigation opportunities; and adaptation and climate resilience; recommendations to the First Ministers were to be made by October 2016, and finalization of the framework by fall of that year.
27. In its final report, the Working Group on Specific Mitigation Opportunities identified the phase out of traditional coal-fired power plants by 2030 as a potential policy option. The tool to implement that policy was a new regulatory requirement to close all unabated coal-fired units by 31 December 2029 (25 years earlier than the 2012 Regulations did).
28. On or about 9 December 2016, the federal, territorial, and provincial governments, save for Saskatchewan and Manitoba, released the "Pan-Canadian Framework on Clean Growth and Climate Change", which states that the participating governments will work

together to accelerate the phase out of traditional coal-fired power plants across Canada by 2030.

Alberta's Actions

29. In 2015, the Government of Alberta introduced its "Climate Leadership Plan", which in particular changed its policies regarding coal-fired electrical generation -- with the intended effect of shortening the expected operating lives of coal mines and coal-fired electricity generation.
30. To that end, the Government of Alberta determined to require Capital Power and other owners of generators to cease operations that produce coal-fired emissions, but acknowledged that it would provide compensation for early closures.
31. On 24 November 2016, the Government of Alberta entered into an "Off-Coal Agreement" with Capital Power. The express objective of the Off-Coal Agreement is to end coal-fired electricity generation in Alberta by 2030.
32. In the Off-Coal Agreement, Capital Power committed to end coal-fired electrical generation by 2030 in exchange for a grant of \$733,807,598.86, paid in fourteen annual payments of \$52,414,828.49 by the Government of Alberta.
 - (a) The purpose of the payments is said to be to compensate Capital Power for early closure impacts of the generating units pursuant to the Government of Alberta's Climate Leadership Plan, other governmental policies or programs, and other related off-coal agreements.
 - (b) The payments to Capital Power are said to be calculated based on an approximation of capital invested in coal-fired generation units that would not be recovered by 2055, and used a discount rate of 3%.
33. The Government of Alberta reiterated, upon making the Off-Coal Agreement, its interest in maintaining a positive investment environment while ensuring that workers and communities affected by the coal phase-out are supported.
34. However, compensation was provided only to the owners of the generators. Nothing was paid for Genesee LP's mineral rights in the coal, without which there would have been no Genesee Power Plant.

35. The Government of Alberta has in real and practical terms paid Capital Power to strand the coal royalty interest of Genesee LP.

Federal Actions

36. On or about 21 November 2016, the Government of Canada announced that it would accelerate its plan to phase out traditional coal-fired electrical generation across Canada by 2030.
37. On or about 17 December 2016, the Government of Canada published a notice of intent in the Canada Gazette which confirmed that the Regulations would be amended to phase out traditional coal-fired electrical generation by 2030.
38. Unveiled on 17 February 2018, the amendment requires any units commissioned after 1974 to comply with a new federal emissions limit by 2030. The effect of this amendment is that all traditional coal-fired generators, including the three Genesee units, must close by that date.
39. The amendment to the Regulations came into force on 30 November 2018 (by SOR/2018-263), and was accompanied by a “Regulatory Impact Analysis Statement”. On the benefit of expediting the phase out of traditional coal-fired electrical generation to 2030, this document states that:

The expected reduction in cumulative GHG emissions resulting from the Amendments is approximately 94 megatonnes (Mt CO₂e) ... The total expected benefit will be \$4.7 billion, including \$3.4 billion in climate change benefits and \$1.3 billion in health and environmental benefits from air quality improvements.

Legitimate Expectations

40. When Altius Royalty purchased the royalty interest in 2014 through Genesee LP, it relied upon statements and representations made by the Defendants regarding the reliability and consistency of their environmental policies, including the former Regulations, and their safe investment climate.
41. In particular, the expectations that the Regulations would continue as enacted and that the Genesee Power Plant would generate electricity from coal until 2055 directly contributed to and encouraged Altius Royalty to purchase the royalty interest.

42. However, the subsequent decision of the Defendants to phase out traditional coal-fired electrical generation by 2030 caused the legitimate expectations of Altius Royalty to be foiled.

Taking

43. The Defendants' actions as aforesaid have resulted in a grave loss of value of Genesee LP's interests and benefits to themselves.
44. Genesee LP has been deprived of rights of use and enjoyment of its property. A taking of the property interests of Genesee LP has occurred. The coal which is mined and used to fuel the Genesee Power Plant has been sterilized and rendered of no value.
45. In the result, Genesee LP has lost the value of its property, the royalty from the coal that was to be used for electricity generation after 2030 – in the approximate amount of \$190,000,000.

Undue Interference

46. The actions of the Defendants constitute undue interference with the economic relations of Genesee LP. More specifically:
- (a) the Government of Alberta has in real and practical terms paid Capital Power, the only user of the coal in which Genesee LP has its royalty interest, to cease generating coal-fired electricity by 2030; and
 - (b) the Government of Canada has in real and practical terms changed the regulatory framework in a way that renders the Plaintiffs' property valueless.

Remedy Sought:

47. The Plaintiffs claim against the Defendants, jointly and severally:
- (a) judgment for damages in the approximate amount of \$190,000,000, or the amount proven at trial;
 - (b) in the alternative, a declaration that the Plaintiffs are permitted to file a claim for compensation under applicable expropriation legislation;
 - (c) costs of this action; and

(d) such further and other relief as this Honourable Court deems just.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiffs' address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiffs against you.