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Our File/Notre dossier: 10359079

March 1, 2019

VIA FACSIMILE & ELECTRONIC MAIL
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Attention: Christian J. Popowich

Dear Madam:

Re: *Altius Royalty Corporation et al v Her Majesty the Queen in right of Alberta et al Court of Queen's Bench of Alberta*
Court File No.: 1801-16746

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With respect to the above matter, please find enclosed for service upon you pursuant to Rule 11.21(1) of the Alberta Rules of Court, a copy of the Attorney General of Canada's Statement of Defence filed March 1, 2019.

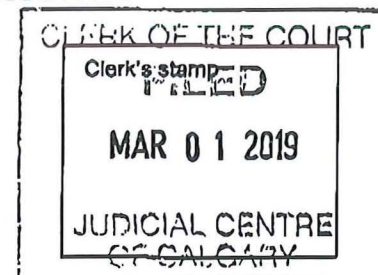
Sincerely,

Sydney McHugh
Counsel
Prairie Region
Department of Justice Canada
SM/tm

Enc.

Form 11
[Rule 3.31]

COURT FILE NUMBER	1801-16746
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTFFS	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	STATEMENT OF DEFENCE TO AMENDED STATEMENT OF CLAIM
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DEPARTMENT OF JUSTICE ATTORNEY GENERAL OF CANADA 601, 606 4 th Street SW Calgary, AB T2P 1T1 Fx: 403-299-3507 Shane Martin, Senior Counsel Ph: 403-299-3506 Sydney McHugh, Counsel Ph: 403-299-3387 File No.: LEX -10359079



Introduction:

1. This Statement of Defence is filed by the Attorney General of Canada, on behalf of Her Majesty the Queen in Right of Canada ("Canada").
2. Canada states that:
 - (a) it has the right at all times to enact lawful legislation;
 - (b) it lawfully enacted the *Regulations Amending the Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations* (SOR/2018-263) (the "*Amended Coal Regulations*") made pursuant to the

Canadian Environmental Protection Act, 1999 (SC 1999, c 33) ("*CEPA, 1999*");

- (c) the Plaintiffs have not suffered any loss or damage, and the alleged loss or damage, including any future loss or damage, is purely speculative and not compensable;
- (d) neither Canada nor its agents maintained, held out, or made any statements or representations as alleged, or at all, that would give rise to the expectations alleged, or at all. In particular, neither Canada nor its agents made any representations that Canada's environmental policies would remain the same, whether or not there were any changes in governing parties

(collectively referred to as "the Alleged Representations"); and

- (e) neither the *Amended Coal Regulations* nor any action by Canada constitutes:
 - (i) an expropriation, an unlawful taking of the Plaintiffs' property, or any taking at all; or
 - (ii) undue interference with the Plaintiffs' economic relations.

Statement of facts relied on:

- 3. Canada denies each and every allegation in the Amended Statement of Claim except where expressly admitted.
- 4. Canada admits paragraph 11.

Carbon dioxide emissions and the regulation of coal-fired generation of electricity

- 5. The *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations* (SOR/2012-167) (the "*Coal Regulations*"), were published in the *Canada Gazette*, Part II, in September 2012 for the purpose of establishing a regime to reduce carbon dioxide emissions resulting from coal-fired generation of electricity.
- 6. In December 2015, representatives of Canada attended the Conference of the Parties to the United Nations Framework Convention on Climate Change in Paris, France and reached an agreement with 194 other countries to fight climate change (the "Paris Agreement"). Canada ratified the Paris Agreement in October 2016. This was in accordance with Canada's commitment to reducing greenhouse gas emissions.
- 7. In December 2016, Canada released the *Pan-Canadian Framework on Clean Growth and Climate Change*, which was developed alongside Canadian provinces

and territories and in consultation with Indigenous peoples. The *Pan-Canadian Framework on Clean Growth and Climate Change* outlines initiatives for reducing greenhouse gas emissions from the energy sector and commits federal, provincial, and territorial governments to work together to phase out conventional coal-fired electricity generating units in Canada by 2030.

8. On December 17, 2016, Canada published a notice of intent in the *Canada Gazette*, Part I, that communicated its intention to amend the *Coal Regulations* so as to require all coal-fired electricity generation units to meet a greenhouse gas emission performance standard no later than 2030.
9. The *Amended Coal Regulations* came into force on November 30, 2018.

Any matters that defeat the claim of the plaintiff(s):

10. Canada states that the Plaintiffs have not suffered any loss or damage, and the alleged loss or damage, including any future loss or damage, is purely speculative and not compensable.
11. Canada denies that:
 - (a) the nature of the Plaintiffs' claimed rights are such as to entitle them to compensation;
 - (b) any of its actions have resulted in the Plaintiffs being deprived of their property;
 - (c) any of its actions have resulted in the Plaintiffs being deprived of the use and enjoyment of their property;
 - (d) any of its actions have rendered the Plaintiffs' property valueless;
 - (e) any of its actions have resulted in the removal of all reasonable uses of the Plaintiffs' property;
 - (f) any of its actions have resulted in the Plaintiffs' being divested of a proprietary interest;
 - (g) any proprietary interest of the Plaintiffs was transferred to Canada;
 - (h) Canada expropriated or engaged in taking of any kind of the Plaintiffs' property, proprietary interests or rights therein, either as alleged or at all;
 - (i) Canada received any benefit that could cause it to be liable to the Plaintiffs or entitle the Plaintiffs to the relief claimed;
 - (j) any of its actions have impacted the Plaintiffs' interests as alleged, more than minimally, or at all; and

- (k) any of its actions have caused the loss or damage alleged, or at all.
12. Canada further denies that:
- (a) any of its actions constitute undue interference with the economic relations of Genesee Royalty Limited Partnership, the other Plaintiffs, or any other party, as alleged, or at all;
 - (b) any of its actions with respect to Genesee Royalty Limited Partnership, the other Plaintiffs, or any other party were unlawful, as alleged, or at all;
 - (c) it had any intention, as alleged, or at all, to cause economic or any other harm to the Plaintiffs; and
 - (d) any of its actions have caused economic harm to the Plaintiffs.
13. Canada further denies that it or its agents made the Alleged Representations to the Plaintiffs.
14. Alternatively, if Canada or its agents did make the Alleged Representations to the Plaintiffs, which is denied, those Alleged Representations were not untrue, inaccurate, or misleading.
15. In the further alternative, if Canada or its agents did make the Alleged Representations to the Plaintiffs, which is denied, the Plaintiffs' reliance on those Alleged Representations was not reasonable.
16. In the further alternative, if the Plaintiffs did hold reasonable expectations based upon the Alleged Representations made by the Canada or its agents, which is denied, those expectations were not foiled or otherwise frustrated and did not result in the impacts claimed by the Plaintiffs or the loss or damage alleged, or at all.
17. If the Plaintiffs did suffer the loss or damage as alleged, which is denied, then such loss or damage is too remote to be compensable.
18. In the further alternative, if the Plaintiffs have suffered any loss or damage, which is denied, the loss or damage was not caused by any of Canada's actions and results from causes unrelated to Canada's actions and such other causes as are within the knowledge of the Plaintiffs.
19. In the further alternative, if the Plaintiffs have suffered any loss or damage by reason of any acts or omissions by Canada, which is denied, the Plaintiffs contributed to the loss or damage by their acts or omissions. Canada further states that the Plaintiffs have failed to mitigate any loss or damage.
20. In any case, the Plaintiffs' claims are not capable of sustaining any cause of action or entitling the Plaintiffs to the relief claimed. Canada relies on *CEPA, 1999*, the

defence of statutory authority and the *Crown Liability and Proceedings Act* (RSC, 1985, c C-50).

Remedy sought:

21. Canada requests that the claim against it be dismissed in its entirety with costs.