

March 10, 2021

To: Parties currently registered in Proceeding 26127

Signalta Resources Limited
High River Peaking Power Facility and Interconnection
Proceeding 26127
Application 26127-A001

Ruling on standing

1. In this ruling, the Alberta Utilities Commission decides whether to hold a public hearing to consider an application by Signalta Resources Limited to construct and operate a 19.9-megawatt natural gas-fired power plant designated as the High River Peaking Power Facility, in the High River area.
2. The Commission must hold a hearing if it appears to the Commission that its decision may directly and adversely affect the rights of a person who has filed a statement of intent to participate in Proceeding 26127. Such a person may participate fully in the hearing, including giving evidence, questioning of witnesses, and providing argument. This permission to participate is referred to as standing.
3. The Commission issued a notice of application for Proceeding 26127 on December 17, 2020, and received a statement of intent to participate from Elemental Energy Renewables Inc. The Commission requested additional comments on standing from both Signalta and Elemental.
4. The Commission has authorized me to communicate its decision on standing.

Ruling

5. Elemental currently holds an option to lease agreement respecting lands affected by Signalta's proposed project (both the project land and adjacent land). The agreement is not registered on title, nor is a caveat giving notice of the agreement. Signalta believes that Elemental does not have an interest in the land, and even if it did, Signalta's interest has priority under the *Land Titles Act* because Signalta registered a caveat on title and Elemental did not. Elemental disagrees with Signalta's claim, asserting that it has valid and existing land rights and interests established through its option to lease agreement.
6. Section 9(2) of the *Alberta Utilities Commission Act* sets out how the Commission must determine standing:

(2) If it appears to the Commission that its decision or order on an application may directly and adversely affect the rights of a person, the Commission shall

- (a) give notice of the application in accordance with the Commission rules,
- (b) give the person a reasonable opportunity of learning the facts bearing on the application as presented to the Commission by the applicant and other parties to the application, and
- (c) hold a hearing. [emphasis added]

7. The meaning of the key phrase, “directly and adversely affect,” has been considered by the Court of Appeal of Alberta on multiple occasions, and the legal principles set out by the court guide the Commission when it determines standing. Standing is determined by application of a two-part test. The first test is legal: a person must demonstrate that the right being asserted is recognized by law. This could include property rights, constitutional rights or other legally recognized rights, claims or interests. The second test is factual: a person must provide enough information to show that the Commission’s decision on the application may “directly and adversely affect” the person’s right, claim or interest.¹

8. To determine whether Elemental has rights recognized by law over the project land, it is necessary to examine all of the circumstances and factual background which may be relevant to the issue. In this unique situation, the Commission considers that Elemental has standing to participate in the hearing on Signalta’s application for that purpose, and has standing due to its status as an option holder in respect of the adjacent land. The Commission is also satisfied that Elemental has met the second part of the standing test. Given Elemental’s plans to develop the project land and adjacent land for a solar project, it has demonstrated that its interests may be directly and adversely affected by the Commission’s decision on the application.

9. In considering Signalta’s application under Section 11 of the *Hydro and Electric Energy Act*, the Commission must consider whether the project is in the public interest, having regard to its social, economic and environmental effects. In addition, Section 8(5) of the *Alberta Utilities Commission Act* grants the Commission broad authority to “hear and determine all questions of law or fact.” Taken together, the Commission considers that to the extent it is necessary to determine whether approval of the project is in the public interest, it may hear and determine legal issues related to the priority of interests in the project and adjacent lands.

10. As noted above, the Commission considers that it requires more information to assess Elemental’s asserted interest over the project land for the purpose of discharging its statutory obligations. This ruling should not be construed as a final determination on the validity, enforceability or priority of Elemental’s versus Signalta’s interests under the priority scheme established by the *Land Titles Act*. Parties should be prepared to provide any evidence or legal argument they consider would be helpful to the Commission on this subject in accordance with the process schedule established in the notice of hearing, should the Commission consider it necessary to assess the priority issues in order to make a decision on Signalta’s application.

¹ *Cheyne v Alberta (Utilities Commission)*, [2009 ABCA 94](#); *Dene Tha’ First Nation v Alberta (Energy and Utilities Board)*, [2005 ABCA 68](#) [*Dene Tha’*].

11. Should you have any questions about the matters addressed in this letter, please contact the undersigned at 403-592-4385 or by email at kim.macnab@auc.ab.ca.

Yours truly,

Kim Macnab
Commission Counsel