

# ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda			✓
Ober	✓		
Ziegner	✓		

## STATE OF INDIANA

### INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF ANGELINA SOLAR )  
I, LLC AND ALGONQUIN POWER FUND )  
(AMERICA) INC. FOR: (1) A DETERMINATION )  
THAT ALGONQUIN POWER FUND (AMERICA) )  
INC. HAS THE NECESSARY TECHNICAL, )  
FINANCIAL, AND MANAGERIAL CAPABILITY TO )  
ACQUIRE, OWN, AND OPERATE THE ANGELINA )  
SOLAR PROJECT IN INDIANA; (2) ACCEPTANCE )  
BY THE COMMISSION OF ALGONQUIN POWER )  
FUND (AMERICA) INC.'S COMMITMENT, WITH )  
ONE MINOR EXCEPTION, TO THE TERMS AND )  
CONDITIONS IMPOSED ON ANGELINA SOLAR I, )  
LLC IN THE COMMISSION'S MARCH 4, 2020 )  
ORDER IN CAUSE NO. 45292; AND (3) APPROVAL, )  
TO THE EXTENT REQUIRED, OF THE )  
ACQUISITION, OWNERSHIP AND OPERATION OF )  
ANGELINA SOLAR I, LLC BY ALGONQUIN POWER )  
FUND (AMERICA) INC. )

CAUSE NO. 45480

APPROVED: APR 14 2021

### ORDER OF THE COMMISSION

#### Presiding Officers:

James F. Huston, Chairman

Jennifer L. Schuster, Administrative Law Judge

On January 5, 2021, Angelina Solar I, LLC ("Angelina") and Algonquin Power Fund (America) Inc. ("Algonquin") (collectively, "Joint Petitioners") filed a Verified Joint Petition with the Indiana Utility Regulatory Commission ("Commission") initiating this Cause. On January 6, 2021, Joint Petitioners filed the direct testimony of Douglas Herling, Michael Dilworth, and Homer Lensink, constituting Joint Petitioners' case-in-chief. The Indiana Office of Utility Consumer Counselor ("OUCC") did not prefile any evidence in this case.

The Commission set this matter for an evidentiary hearing to be held at 1:30 p.m. on February 22, 2021 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On February 18, 2021, a docket entry was issued advising that, due to the ongoing COVID-19 pandemic, the hearing would be conducted via WebEx. Joint Petitioners and the OUCC participated in the hearing via WebEx, and Joint Petitioners' testimony and exhibits were admitted into the record without objection.

Based upon the applicable law and evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Angelina is engaged in activity that makes it a

“public utility” under Ind. Code § 8-1-2-1 and an “energy utility” under Ind. Code § 8-1-2.5-2, and Algonquin intends to engage in such activity. In its March 4, 2020 Order in Cause No. 45292 (“Declination Order”), in which the Commission declined jurisdiction over certain activities of Angelina under Ind. Code § 8-1-2.5-5, we reserved our jurisdiction under Ind. Code § 8-1-2-83 and required that Angelina obtain prior Commission approval of any transfer of Angelina’s franchise, works, or system. Therefore, the Commission has jurisdiction over Joint Petitioners and the subject matter of this Cause.

**2. Joint Petitioners’ Characteristics.** Angelina is a limited liability company organized and existing under Delaware law and registered as a foreign limited liability company under Indiana law. Angelina’s principal place of business is at 1105 Navasota Street, Austin, Texas. Angelina is wholly owned by Blue Planet Renewable Energy, LLC (“Blue Planet”).

Algonquin is a corporation organized and existing under Delaware law, with its principal place of business at 354 Davis Road, Suite 100, Oakville, Ontario, Canada. Algonquin is wholly owned by Algonquin Power (Canada) Holdings Inc., an Ontario corporation and a subsidiary of Algonquin Power Co., an Ontario trust and a wholly owned subsidiary of Algonquin Power & Utilities Corp. (“APUC”), a Canadian corporation.

**3. Proposed Transaction and Relief Requested.** In Cause No. 45292, Angelina requested that the Commission decline to exercise its jurisdiction over Angelina and Angelina’s construction, ownership, and operation of, and other activities in connection with, a proposed 138kV transmission line (the “Gen-Tie Line”) to interconnect an electric generation facility (the “Angelina Solar Project”) into American Electric Power’s existing College Corner 138 kV substation located in Union County, Indiana.

In the Declination Order, the Commission determined that it was in the public interest to decline to exercise its jurisdiction over Angelina, except for a few limited provisions. Pursuant to the Declination Order, a third-party owner and operator may succeed to Angelina’s declination of jurisdiction, provided that (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Angelina Solar Project and (2) the successor satisfies the same terms and conditions imposed on Angelina as set forth in the Declination Order.

On December 4, 2020, Blue Planet and Algonquin entered into an Exclusivity Agreement (“Exclusivity Agreement”) in which Algonquin expressed its intent to purchase Blue Planet’s membership interests in Angelina (the “Proposed Transaction”). The Proposed Transaction is expected to close after all necessary consents and approvals are obtained. Following the Proposed Transaction, Algonquin will own all the membership interests in Angelina.

Joint Petitioners request that the Commission find that Algonquin has the necessary technical, financial, and managerial capability to own and operate the Angelina Solar Project in Indiana. Further, to the extent required, Joint Petitioners request that the Commission approve Algonquin’s acquisition, ownership, and operation of Angelina and the Angelina Solar Project in Indiana. Joint Petitioners also request that the Commission accept Algonquin’s commitment to operate in Indiana pursuant to the terms and conditions contained in the Declination Order, with

one minor exception, which is that the Commission decline to exercise jurisdiction over, or approve, the keeping of Angelina's public utility books and records outside Indiana.

#### **4. Joint Petitioners' Case-in-Chief.**

**A. Douglas Herling.** Mr. Herling, Vice President of Development for Open Road Renewables, LLC ("Open Road"), testified that Angelina is wholly owned by Blue Planet, which is a joint venture between Open Road and MAP Renewable Energy. He stated that the Gen-Tie Line is in an advanced stage of development, with preliminary design having been completed. Mr. Herling testified that Angelina expects PJM Interconnection, LLC ("PJM") to issue its report on the Facilities Study for the Gen-Tie Line in January 2021, after which the final design and engineering for the Gen-Tie Line will be completed prior to moving into construction. According to Mr. Herling, on December 24, 2020, a construction notice submitted by Angelina to the Ohio Power Siting Board for the approximately 100-foot portion of the Gen-Tie Line to be located in Ohio was approved.

Mr. Herling described the Proposed Transaction and explained that, on December 4, 2020, Blue Planet and Algonquin entered into the Exclusivity Agreement, in which Algonquin expressed its intent to purchase, and Blue Planet expressed its intent to sell, 100% of the membership interests in Angelina. He stated that the Exclusivity Agreement was the result of arms-length negotiations and is subject to the completion of negotiation and due diligence and subject to the receipt of certain approvals.

Mr. Herling explained that the relief sought in the Joint Petition is meant to comply with the Declination Order. To the extent required, Joint Petitioners are requesting that the Commission approve Algonquin's acquisition, ownership, and operation of the Angelina Solar Project in Indiana (the Gen-Tie Line). Assuming the Commission grants such relief, Mr. Herling stated that Angelina and Algonquin will provide notice to the Commission and the OUCC of the closing of the transaction within five business days after such closing. He stated that, should the Proposed Transaction be approved, Angelina would continue to abide by the terms of the Declination Order, with one minor exception. Mr. Herling stated that the sole requested exception is that the Commission expressly decline to exercise its jurisdiction over the requirement that Angelina's public utility records be kept within Indiana or alternatively, approve Angelina's keeping of such records outside Indiana.

**B. Michael Dilworth.** Mr. Dilworth, Senior Vice President, Renewable Generation – Solar of Liberty Utilities Canada Corp., a subsidiary of APUC, testified that he is responsible for the origination and execution of unregulated North American solar projects. He stated that APUC is a diversified international generation, transmission, and distribution utility with over \$11 billion of total assets and a market capitalization of approximately \$9 billion. He stated that, upon the successful completion of the Proposed Transaction, Angelina will be part of APUC's Renewable Energy Group, which has a portfolio of long-term contracted wind, solar, and hydroelectric generating facilities with approximately 1.5 GW of installed capacity and more than 1.6 GW of incremental renewable energy capacity under construction. The Renewable Energy Group owns and operates many wind and solar projects in North America and expects another 96 MW of solar projects and 955 MW of wind projects to become operational in 2021. Mr. Dilworth

stated that APUC does not provide retail electric service to customers in Indiana or any state other than Maine.

Mr. Dilworth confirmed that Algonquin will not seek to recover any costs of the Proposed Transaction through rates paid by Indiana ratepayers. He also discussed Algonquin's request that the Commission permit Angelina to keep its books and records outside Indiana and confirmed that Algonquin would ensure that such books and records will be available to the Commission and the OUCC in Indiana within a reasonable time, if requested. Mr. Dilworth also stated that Joint Petitioners have agreed to reimburse the OUCC for its reasonable and documented expenses for travel outside Indiana to review Angelina's books and records, if necessary.

Mr. Dilworth testified that, in addition to its total assets and market capitalization, APUC had over \$3.1 billion total liquidity, with an additional \$318.2 million of cash on hand, as of September 30, 2020. He stated that APUC has secured additional capital through common equity offerings to partially finance renewable development growth projects and for general corporate purposes. He also testified that the Renewable Energy Group has extensive credit facilities and cash on hand of over \$318 million at the APUC level for distribution as of September 30, 2020.

According to Mr. Dilworth, APUC's project finance group is responsible for all project-level financing for the Renewable Energy Group. He explained that Algonquin Power Co., the indirect parent of Algonquin, has closed over \$4 billion of project financing on 13 projects since 2017, and APUC's project finance group maintains an extensive network of capital market relationships with lenders and institutional investors. He stated that Algonquin typically finances energy projects using balance sheet cash reserves and liquidity, with construction activities funded by a third-party construction loan. Mr. Dilworth testified that Algonquin plans to finance the purchase of Angelina using balance sheet cash reserves and other APUC liquidity. He further stated the development, construction, and operation of the Gen-Tie Line would be funded using available cash reserves and liquidity.

C. **Homer Lensink**. Mr. Lensink, Vice President, Development, of Liberty Utilities Canada Corp., a subsidiary of APUC, testified regarding Algonquin's technical and managerial qualifications. He stated that APUC (including Algonquin as its wholly owned indirect subsidiary) has extensive experience with the development, design, construction, and operation of distribution and transmission circuits and generation tie-lines. He explained that, in this project, like all others, Algonquin will directly purchase the initial owner's engineering services for generation tie-lines, as well as interconnection matters with the applicable regional transmission organization ("RTO") and independent system operator ("ISO"). Design and construction will be contracted through tier one engineering procurement and construction contractors, either in addition to the power generation solar array or separately for a single interconnection/substation and tie-line scope. Mr. Lensink also stated that Algonquin has experience developing and maintaining transmission projects related to both solar and wind assets in many North American states and provinces and ISOs.

Mr. Lensink described the experience and capabilities of the individuals at Algonquin that would manage and direct the construction and operation of the Gen-Tie Line. He testified that Algonquin will either have operations staff at the project facility or contract a reputable operations and maintenance ("O&M") provider to inspect, maintain, and report on the Gen-Tie Line and

project facility with Algonquin oversight and adherence to Algonquin safety protocols, as well as regular compliance evaluations.

**5. Commission Discussion and Findings.** In the Declination Order, we found that Angelina was a “public utility” within the meaning of Ind. Code § 8-1-2-1. We also determined, pursuant to Ind. Code § 8-1-2.5-5, that it was in the public interest to decline to exercise our jurisdiction over Angelina, with a few exceptions. One of the exceptions included transfers of ownership. Declination Order at 9. In the Declination Order, we stated that “a third-party owner and operator may succeed to [Angelina’s] declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Angelina Solar Project; and (2) the successor satisfies the same terms and conditions imposed on [Angelina] as set forth in this Order.” *Id.*

Mr. Dilworth described the technical experience that Algonquin and its affiliates have in operating renewable energy generation, transmission, and distribution projects throughout North America. Mr. Lensink also presented evidence demonstrating that APUC, including Algonquin, has extensive experience with the development, design, construction, and operation of distribution and transmission circuits and generation tie-lines. He also demonstrated Algonquin’s experience in developing and maintaining transmission projects related to both solar and wind assets in many North American states and provinces and ISOs. Based on the evidence of record, we find that Algonquin has the technical capability to operate the Angelina Solar Project in Indiana (the Gen-Tie Line).

Mr. Dilworth presented financial information about Algonquin and its parent companies indicating that they have the financial capability to own and operate the Gen-Tie Line in Indiana. He described Algonquin’s intention to finance the purchase of Angelina using balance sheet cash reserves and other APUC liquidity and stated that the development, construction, and operation of the Gen-Tie Line would be funded using available cash reserves and liquidity. Mr. Lensink presented the backgrounds and description of the individuals at Algonquin that will manage and direct the construction and operation of the Gen-Tie Line. Based on the evidence of record, we find that Algonquin has the financial and managerial capability to own and operate the Gen-Tie Line.

The Declination Order requires that Algonquin satisfy the same terms and conditions imposed on Angelina in the Declination Order. Mr. Herling and Mr. Dilworth discussed Joint Petitioners’ request that, following the transaction, the Commission decline to exercise its jurisdiction with respect to the requirement that Angelina’s public utility records be kept within Indiana, or alternatively, approve the keeping of such records outside Indiana. Based on the evidence of record, we find Joint Petitioners’ requested exception to the requirements of the Declination Order to be reasonable and therefore approve it, pursuant to the conditions that Joint Petitioners will make such books and records available to the Commission and the OUCC in Indiana within a reasonable time should it be necessary in the future. In addition, if it becomes necessary for the OUCC to travel outside Indiana to gain access to such records, Joint Petitioners shall timely reimburse the OUCC for its reasonable and documented expenses for related travel.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Algonquin has the technical, financial, and managerial capability to own and operate the Angelina Solar Project in Indiana (the Gen-Tie Line).

2. Joint Petitioners are permitted to maintain Angelina's public utility records outside Indiana, provided that Joint Petitioners make such books and records available to the Commission and the OUCC in Indiana within a reasonable time should access to such records become necessary in the future. In addition, if it becomes necessary for the OUCC to travel outside Indiana to gain access to such records, Joint Petitioners shall timely reimburse the OUCC for its reasonable and documented expenses for related travel.

3. Other than the change discussed in Ordering Paragraph 2, Angelina and any of its successors in interest, including Algonquin, continue to be bound by the terms of the Declination Order.

4. Algonquin's acquisition, ownership, and operation of Angelina and the Angelina Solar Project in Indiana is hereby approved.

5. Joint Petitioners shall provide notice to the Commission and the OUCC of the closing of the Proposed Transaction within five business days after such closing.

6. Joint Petitioners shall comply fully with the terms of this Order and submit to the Commission all information required by this Order.

7. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, OBER, AND ZIEGNER CONCUR; KREVDA ABSENT:**

**APPROVED: APR 14 2021**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

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**Dana Kosco**  
**Secretary of the Commission**