



## Jay Shepherd

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### FAX TRANSMISSION

**Date:** November 4, 2015

**File No:** EB-2015-0003

**From:** Mark Rubenstein

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## Jay Shepherd

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### BY FAX OR EMAIL

November 4, 2015

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Dear Sirs/Mesdames:

**Re: EB-2015-0003 -- PowerStream Inc. -- Notice of Appeal**

Please find enclosed the Ontario Education Services Corporation's Notice of Appeal and Appellant's Certificate Respecting Evidence served upon you pursuant to the *Rules of Civil Procedure*.

Yours very truly,  
**JAY SHEPHERD P. C.**

A handwritten signature in black ink, appearing to read 'Mark Rubenstein', with a long horizontal flourish extending to the right.

Mark Rubenstein

File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

BETWEEN:

**ONTARIO EDUCATION SERVICES CORPORATION**

Appellant

-and-

**ONTARIO ENERGY BOARD and  
POWERSTREAM INC.**

Respondents

**APPEAL MADE UNDER the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, Sched. B, s. 33**

**NOTICE OF APPEAL**

**THE APPELLANT**, Ontario Education Services Corporation, **APPEALS** from the Decision on Threshold Question and Procedural Order No. 5 (the “Threshold Decision”) of the Ontario Energy Board (the “Board”) released October 6, 2015, in proceeding EB-2015-0003.

**THE APPELLANT ASKS** that the Appeal be allowed and orders be granted as follows:

1. The Board’s Threshold Decision be set aside and the matter be remitted back to the Board to be determined in accordance with this Court’s reasons and/or with directions as may be given;
2. Costs to the Appellant on the appeal; and
3. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS OF APPEAL are as follows:**

1. PowerStream Inc. ("PowerStream") applied to the Board for orders pursuant to section 78 of the Ontario Energy Board Act, 1998 ("OEB Act") to approve just and reasonable rates for the distribution of electricity to be effective January 1, 2016 and for each following year through to December 31, 2020.
2. PowerStream justified its proposed rates on the basis of its forecast costs and revenue to serve its customers for each of those five years.
3. The Ontario Education Services Corporation, through its energy regulatory project named the School Energy Coalition ("SEC"), was granted intervenor status by the Board in the proceeding.
4. Evidence on the record was that PowerStream was going to merge with three other local distribution companies (Horizon Utilities Inc., Enersource Hydro Mississauga Inc., and Hydro One Brampton Networks Inc.). While no final agreement had been reached, the evidence was that the parties were very close and the merger, if approved, would take place in 2016, during the period in which the approval of rates were being sought by the Board.
5. During the Technical Conference on September 9<sup>th</sup> 2015, SEC requested certain documents regarding the merger, and in particular the costs to serve PowerStream customers after the merger, but PowerStream refused. SEC filed a motion on September 18<sup>th</sup> 2015, seeking an order requiring PowerStream to provide that information.

6. On September 18<sup>th</sup> 2015, the Board issued Procedural Order No. 3, seeking submissions on a threshold question, what, if any, consideration should be given by the Board to the announced merger as part of its review of PowerStream's application. SEC, as well as other parties, provided submissions.
7. In its Threshold Decision, the Board determined that in this proceeding, the cost impacts of a merger were not relevant to its determination of just and reasonable rates for the years 2016-2020. In light of those findings, it denied SEC's motion.
8. In doing so, the Board committed the following errors:
  - a. The Board erred in law by fettering its own discretion. It treated the Board's policy, outlined in the *Report of the Board on Rate-Making Associated with Distribution Consolidation* ("MAADs Policy"), as if it were binding. By excluding merger evidence, which would otherwise be relevant, it prevented parties from accessing the very evidence necessary to show why the Board should depart from the MAADs Policy in this case.
  - b. The Board erred in law by determining that it could set just and reasonable rates for PowerStream's customers for the period 2016 to 2020 based on forecast costs, while excluding any consideration of the effects of the merger on those forecast costs. In doing so, the Board erred by:
    - i. Not allowing consideration of information which would materially affect the cost to serve PowerStream's customers.

ii. Allowing or requiring consideration of cost information to set rates that it knows will no longer be accurate.

iii. Making an arbitrary and unreasonable distinction between allowing all other forecast events to be considered in the proceeding, but not the merger.

c. On the basis of the above errors, the Board further erred in law by denying SEC's motion.

9. Such further grounds as counsel may advise and this Court may deem just.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, s. 33 provides a right of appeal to the Divisional Court from any Order of the Board on questions of law or jurisdiction;
2. The Decision appealed from is interlocutory; and
3. Leave to appeal is not required;

The Appellant requests that this appeal be heard at Toronto, Ontario.

November 4, 2015

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Counsel to PowerStream Inc.



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-and-

**ONTARIO ENERGY BOARD and  
POWERSTREAM INC.**

Court File No.

Appellant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

Proceeding Commenced at Toronto

**NOTICE OF APPEAL**

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**APPELLANT'S CERTIFICATE RESPECTING EVIDENCE**

The Appellant certifies that the following evidence is required for the appeal, in the Appellant's opinion:

1. The record from Ontario Energy Board matter number EB-2015-0003, as of October 6 2015, the date of the Decision on Threshold Question and Procedural Order No. 5.
2. Those portions of the record in Ontario Energy Board matter number EB-2008-0244 referred to by the Board or parties in EB-2015-0003, that are not otherwise in the record from that proceeding.

November 4, 2015

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