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May 14, 2014

Director General
Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor
Ottawa, Ontario
K1A 0H5

Attention: Director General

Dear Director General:

Re: Consultation on the Canada Business Corporations Act

On behalf of our client Canadian Utilities Limited ("**CU**"), we wish to provide comments on the consultation on the *Canada Business Corporation Act* ("**CBCA**") published by Industry Canada in December 2013 (the "**Consultation**"). CU welcomes the opportunity to make this submission.

The ATCO Group

CU is a member of the ATCO Group which is a diversified, Canadian-based international group of companies focused on sustainable growth and achievement with approximately $16 billion in assets and more than 9,800 employees actively engaged in structures & logistics (manufacturing, logistics and noise abatement), utilities (pipelines, natural gas and electricity transmission and distribution), energy (power generation, natural gas gathering, processing, storage and liquids extraction) and technologies (business systems solutions). CU is a Canadian reporting issuer with securities listed on the Toronto Stock Exchange. CU is incorporated under the CBCA and also has a number of subsidiaries that are incorporated under the CBCA.

CU has had a controlling share owner since it was acquired by ATCO Ltd. ("**ATCO**"). ATCO is CU's controlling share owner, and currently controls approximately 88.14% of CU's outstanding voting shares. ATCO's controlling share owner currently controls approximately 83.92% of ATCO's outstanding voting shares.

General

ATCO and CU view effective corporate governance as an essential element for the ongoing well-being of the companies and their share owners. They strive to ensure that their corporate governance practices provide for effective stewardship of their businesses, and they evaluate their practices on an ongoing basis and make changes as needed. ATCO and CU also strongly believe that corporate governance and disclosure rules should provide issuers with the flexibility to adopt corporate governance, disclosure and board and management recruitment policies and practices that both comply with applicable legal requirements and suit their own particular needs and circumstances.

As a general principle, ATCO and CU believe the CBCA should be clear, flexible, efficient and permissive, rather than restrictive or prescriptive. In addition, there are important distinctions between corporations that are reporting issuers and controlled corporations or closely held private corporations. A number of proposals referenced in the Consultation would not be appropriate if applied indiscriminately to controlled corporations or to wholly-owned subsidiaries or closely held private corporations as they would have the effect of increasing compliance costs without adding any value for shareholders of such corporations. In the cases of corporations that are reporting issuers, many of the proposals appear to have a substantial overlap with the existing governance and disclosure requirements to which such corporations are already subject under applicable securities law. Furthermore, at this stage of the Consultation, the topics being discussed do not appear to consider that any new requirements should be selectively applied to different classes of securities and the holders thereof, depending on the different rights attached to such securities.

Accordingly, to the extent that any proposal referenced in the Consultation is adopted, careful regard should be had to whether it ought to apply only selectively to those corporations or share owners where a genuine need and shortfall are present, taking into consideration: (i) the rights that may be attached to different classes of securities; (ii) whether or not a corporation is a controlled wholly-owned or a closely held private corporation; or (iii) whether or not the issue has already been adequately addressed by existing securities law requirements.

Executive Compensation – Advisory Say-on-Pay

The Consultation requests submissions on whether shareholder review of executive compensation should be required by law under the CBCA. ATCO and CU do not support the introduction of a shareholder say-on-pay regime for CBCA corporations because it would interfere with the responsibilities and duties of the directors. ATCO and CU believe that the board of directors of a corporation is the most appropriate entity to review and set compensation for management for the following reasons: (i) the directors are usually privy to information that, for confidentiality reasons is not widely available to all shareholders; (ii) directors have specific expertise and experience; and (iii) in fulfilling their fiduciary duties to the corporation, directors are parties to interactions with the corporation and its management that make them the most able to make informed decisions in the best interests of all shareholders. To remove this responsibility from the directors' mandate would not only reduce the importance and purpose of their role, but would also open the door to further encroachments on their responsibilities. ATCO and CU believe that the existing rules governing the

disclosure of information on executive compensation provide adequate and appropriate protection to shareholders who can influence directors by exercising their right to withhold votes from members of a compensation committee (or an entire board), particularly in instances where a majority voting policy is in place.

Shareholder Rights – Majority Voting

The Consultation requests input on the possibility of prescribing a majority voting model in the CBCA that would require that a candidate obtain a majority of shareholder votes to gain a position on the board. ATCO and CU are of the view that the existing provisions in the CBCA appropriately and adequately protect the rights of shareholders with respect to the election of directors. In the case of a controlled corporation, majority voting would not be effective, as the majority shareholder can still effect the election of directors with its votes. While mandating majority voting would result in the imposition of additional complexity in process for such corporations, it would not result in any meaningful change to the outcome of director elections. Mandating majority voting may mislead some shareholders in controlled corporations to believe that their rights have somehow been materially affected while in actual fact the outcomes remain unchanged. In light of the foregoing, ATCO and CU believe that requiring majority voting for controlled corporations will possibly create confusion or uncertainty for shareholders, without advancing the interests of any affected party or group.

Any majority voting requirement should take into account the fact that controlled corporations have unique characteristics. ATCO and CU suggest that, prior to making any changes in respect of majority voting policies, Industry Canada should review the amendments to Part IV of the TSX Company Manual (announced on February 13, 2014), in which the TSX acknowledged the needs of controlled corporations by giving them an exemption from majority voting. Industry Canada should also consider the requirements for the composition of audit committees of controlled corporations set forth in section 3.3 of National Instrument 52-110 *Audit Committees* which provide a useful example of a recognition and accommodation of the unique circumstances of controlled corporations. ATCO and CU believe that similar exemptions or accommodations for controlled corporations should be made in the context of any prescribed majority voting requirement.

Roles of the Chief Executive Officer (CEO) and Chair of the Board

The CBCA is currently silent as to whether the CEO and Chair of the Board must be separate individuals. The Consultation requests input on whether the CBCA should require that the two roles be independent of one another. ATCO and CU strongly believe that an effective corporate governance system provides issuers with the flexibility to adopt officer and director roles that comply with applicable legal requirements while suiting their own particular needs and circumstances. Our client believes that, in the case of a privately held or controlled corporation, any mandatory separation of the Chair and CEO positions would increase compliance and administrative costs, while providing little in the way of practical benefits for shareholders.

By comparison, in the case of corporations that are reporting issuers, this issue is already appropriately covered in applicable securities legislation, particularly National Instrument 58-101 and related forms ("**NI 58-101**"), which requires that issuers disclose whether or not the chair of their board is an independent director. If the board has neither a chair that is independent nor a lead director that is independent, the issuer is required to describe what the board does to provide leadership for its independent directors. The ultimate goal should be effective corporate governance given the particular requirements of each issuer which may or may not include having different individuals serve as chair and CEO. ATCO and CU were among the first issuers to adopt the practice of using an independent lead director for the purposes of ensuring independent oversight of management, a practice that has been in place since 1996. ATCO and CU are of the view that this practice, which is now widespread, and the existing requirements of NI 58-101 provide adequate guidelines and protection to shareholders in this regard.

Diversity of Corporate Boards and Management

The Consultation indicates that several jurisdictions have adopted measures to increase women's representation on boards of directors, including legislating quotas for representation, mandating diversity targets, and issuing voluntary guidelines for corporations to put in place gender diversity policies, targets and reporting and requests that relevant parties comment as to whether new measures to promote diversity within corporate boards should be included in the CBCA.

ATCO and CU would consider such measures to be an unwelcome intrusion into their governance process. In considering individuals as potential directors or members of senior management (or for any other role whatsoever with the organization) ATCO and CU at all times seek the most qualified persons, regardless of gender or other characteristics unrelated to expertise and performance. Our client is of the view that this approach enables ATCO and CU to make decisions regarding the composition of their boards and senior management team based on what is in the best interests of the companies and their share owners. This approach has worked well for ATCO and CU for many years, and both companies have been fortunate to have consistently high-performing boards and senior management teams delivering top quartile results for their respective share owners. In the case of wholly-owned subsidiaries or closely held private corporations, ATCO and CU are of the view that such companies should be free to structure their affairs as they see fit, and that measures to increase diversity on such boards are inappropriate.

In 2013, approximately 33% of the ATCO Group's workforce and 19% of its senior management, as well as 20% of ATCO's board of directors and 30% of CU's board of directors, was female. While the ATCO Group makes public disclosure of information relating to gender diversity within the organization through its Sustainability Report (available to the public on ATCO's website, www.atco.com), it is of the view that it should have the ability to choose whether or not to do so, without regulatory interference.

Additional Disclosure Requirements

The Consultation raises the prospect of requiring issuers to undertake further disclosure and record keeping obligations in the areas of the board's understanding of social and environmental matters on corporate operations, beneficial shareholdings and corporate social responsibility. ATCO and CU's concern is that the effect of amendments in this regard would be impractical and unnecessary for many closely held private corporations, and would provide little in the way of incremental benefit to reporting issuers that are already in compliance with the extensive disclosure requirements under applicable securities legislation, while in each case, the requirements would unnecessarily increase compliance costs. Due regard should be had to these issues in considering any potential amendments to the CBCA.

ATCO Group representatives would be pleased to discuss the foregoing with you if it would be of assistance.

Yours truly,

BENNETT JONES LLP

"Bennett Jones LLP"