Bennett Jones LLP
4500 Bankers Hall East, 855 - 2nd Street SW
Calgary, Alberta, Canada T2P 4K7
Tel: 403.298.3100 Fax: 403.265.7219

January 18, 2022

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission, New Brunswick
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
Via email: comment@osc.gov.on.ca

Me. Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514-864-8381
consultation-en-cours@lautorite.qc.ca

To whom it may concern:

Re: Submissions on Proposed National Instrument 51-107 *Disclosure of Climate-Related Matters*

On behalf of our clients ATCO Ltd. ("**ATCO**"), Canadian Utilities Limited ("**CU**") and CU Inc. ("**CUI**"), we wish to provide comments on the proposed National Instrument 51-107 *Disclosure of Climate-Related Matters* ("**NI 51-107**") put forward by the Canadian Securities Administrators (the "**CSA**"). We welcome the opportunity to make this submission.

The ATCO Group

With approximately $22 billion in assets and more than 6,200 employees, the ATCO Group is a diversified global enterprise with investments in the essential services of Structures & Logistics (workforce and residential housing, innovative modular facilities, construction, site support services, workforce lodging services, facility operations and maintenance, defence operations services and disaster and emergency management services); Utilities (electricity and natural gas transmission and distribution and international electricity operations); Energy Infrastructure (electricity generation, energy storage and industrial water solutions); Retail Energy (electricity and natural gas retail sales); Transportation (ports and transportation logistics); and Commercial Real Estate.

ATCO's controlling shareholder currently controls approximately 87% of ATCO's outstanding voting shares. ATCO is CU's controlling shareholder and currently controls approximately 90% of CU's outstanding voting shares. CU is the sole shareholder of CUI. ATCO, CU and CUI are Canadian reporting issuers. ATCO and CU have public shareholders, with securities listed on the Toronto Stock Exchange.

The controlling interest in ATCO has been maintained since its formation, and the interest in CU since ATCO acquired it in 1980. The companies are of the belief that the existence of the long-standing majority shareholder is of fundamental importance to their governance and operations, and ensures that there is a high degree of alignment between shareholders. This structure enables the companies' boards and managements to focus on long-term success and profitability.

General

ATCO, CU and CUI view effective securities legislation as an essential element for the ongoing success of the companies and their shareholders. The companies strive to ensure that they provide effective stewardship of their businesses and evaluate their disclosure practices on an ongoing basis with changes made as needed. ATCO, CU and CUI also strongly believe that disclosure rules imposed by securities legislation should not only be as clear and streamlined as possible but should also provide issuers with the flexibility to adopt disclosure policies and practices that both comply with applicable legal requirements and suit their own particular needs and circumstances. Rules that provide as much guidance as possible, while still creating a framework within which ATCO, CU and CUI can continue to engage in the practices they deem best suited to their businesses, will allow them to remain efficient while still meeting stated policy goals, such as the goal of streamlining and standardizing climate-related disclosure contemplated by NI 51-107.

In this regard, ATCO, CU and CUI fully support not only the aspects of NI 51-107 that clarify and streamline disclosure obligations and reduce the burden of disclosure on reporting issuers, as set forth more particularly below, but also those disclosure requirements in the instrument that align with international standards, such as the Task Force on Climate-related Financial Disclosures (the "**TCFD**") and the GHG Protocol.

Forward Looking Information

NI 51-107 proposes that reporting issuers would not be required to provide a "scenario analysis" requiring reporting issuers to disclose how resilient their strategies are to climate-related risks and opportunities under a variety of scenarios. The CSA has taken the position that this disclosure is unnecessary. ATCO, CU and CUI agree with this approach and appreciate the CSA's ongoing advocacy regarding the removal of the "scenario analysis" requirement from the International Financial Reporting Standards Foundation's (the "**IFRS Foundation**") proposed global standard.

Further, NI 51-107 would require reporting issuers to disclose targets that they use to manage climate-relate risks and opportunities. These targets would then be used to assess an issuer's performance against the targets where such information is material. ATCO, CU and CUI would suggest that the mandatory disclosure of such targets is premature. At this time, there is no international standard for target creation methodology and imposing this requirement on Canadian reporting issuers before such a standard is in place could put Canadian issuers at a disadvantage. This may also result in confusion among investors who attempt to compare issuers' targets where such targets are prepared by different methods. While ATCO, CU and CUI are not against disclosing targets, they believe this is information better suited for voluntary disclosure.

Materiality and Standards

As drafted, NI 51-107 contains no materiality thresholds on the requirement that reporting issuers disclose details of their governance and risk management procedures. Lacking such a threshold, prudent issuers could be influenced, out of an abundance of caution, to over-report information regarding their governance and risk management, including both material and immaterial details. Over-disclosing in this manner would not serve issuers, regulators or investors.

In addition, NI 51-107 would impose a requirement to report greenhouse gas ("**GHG**") emissions under either the GHG Protocol (as developed by the World Resources Institute and World Business Council for Sustainable Development) or a comparable reporting protocol. ATCO, CU and CUI support this approach and submit that a single reporting protocol for disclosing GHG emissions (ideally, the GHG Protocol) should be established for issuers who choose to disclose this information. This would improve investors' and regulators' ability to accurately compare issuer emissions data.

ATCO, CU and CUI support the current wording of the proposal requirements, in which issuers may disclose scope 1, 2 and 3 GHG emissions or explain why they have not done so. However, they would suggest that scope 3 emissions be removed from the requirement at this time. While scope 1 and 2 emissions data can currently be relatively accurately measured or estimated and disclosed, scope 3 GHG standards are being investigated to lessen overlap in emissions accounting between different parts of an integrated supply chain. Once scope 3 emissions assessment measures improve, NI 51-107 could be amended to include relevant disclosure.

ATCO, CU and CUI share the view that GHG emissions and other information required to be disclosed under NI 51-107 should not be subjected to assurance requirements. Evaluation of climate risks is very complex and gathering related information requires significant time and effort. Adding this requirement to the process would add significant time and costs. It would also increase pressure to meet the filing deadlines imposed by the proposed instrument.

Timing of Reporting

Currently, the provisions of NI 51-107 would require reporting issuers that do not send a management information circular to securityholders (including CUI) to provide additional emissions disclosure in their annual information forms ("**AIF**") or management's discussion and analysis ("**MD&A**"). CUI typically files its AIF and MD&A in February of each year. In contrast, certain information required to be disclosed pursuant to NI 51-107 is typically not available until later in the year. In order for CUI and other similar issuers to provide the additional disclosure proposed by NI 51-107 by the current filing deadline for AIFs and MD&A each year, there would have to be significant changes to the environmental regulatory reporting regime. This would incur significant expense and process change for issuers, such as CUI.

In addition, NI 51-107 would allow issuers to provide emissions disclosure via reference to other documents. However, issuers typically provide sustainability disclosure later in the year than when they file their AIF and MD&A. Consequently, the ability to disclose via reference to other documents is of limited use; either investors and regulators will have to wait for the latter disclosure to properly assess issuers' emissions data, or issuers will have to shift timelines on their environmental regulatory reporting regime, with the consequences noted above.

As such, we recommend that the CSA either consider some flexibility on the timing of climate disclosures or allow issuers to reference other documents from the previous year in order to minimize such impacts. Provided such documents are publicly available via SEDAR, this should meet NI 51-107's stated goals. Alternatively, the CSA could permit supplemental disclosure staggered from issuers' AIF and MD&A and gradually shift these over a transition period to align with the currently contemplated timelines.

Aligning with International Standards

One of the goals of NI 51-107, as stated in the instrument, is ensuring consistency with international standards, particularly those promulgated by the IFRS Foundation. However, the IFRS Foundation announced the formation of a sustainability standards board, the International Sustainability Standards Board (the "**ISSB**"), after the publication of NI 51-107. The intention is for the ISSB to deliver a comprehensive global baseline of sustainability-related disclosure standards that provide investors and other capital market participants with information about companies' sustainability-related risks and opportunities. The IFRS Foundation has also announced its intention to allow comments on draft standards for the ISSB by mid-2022. ATCO, CU and CUI submit that the CSA should consider delaying the finalization and implementation of NI 51-107 until the standards for the ISSB are finalized, so that consistency with such standards can be ensured.

Representatives of ATCO, CU and CUI would be pleased to discuss the foregoing with you if it would be of assistance.

Yours truly,

BENNETT JONES LLP

"Bennett Jones LLP"