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April 16, 2014

VIA EMAIL

Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8

Attention: The Secretary

Dear Secretary:

Re: Request for Public Comment re Proposed OSC Amendments to Form 58-101F1 Disclosure Requirements Regarding the Representation of Women on Boards and in Senior Management and Director Term Limits

On behalf of our client the ATCO Group, which includes ATCO Ltd. ("**ATCO**") and Canadian Utilities Limited ("**CU**"), we wish to provide comments on the Proposed OSC Amendments to Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the "**Proposed Amendments**"). ATCO and CU welcome the opportunity to make this submission.

The ATCO Group

The ATCO Group 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). ATCO and CU are both Canadian reporting issuers with securities listed on the Toronto Stock Exchange.

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.

Mandatory Disclosure Regarding Women on Boards and in Senior Management and Director Term Limits

The Proposed Amendments contemplate a "comply or explain" disclosure regime that would require issuers to develop and disclose policies and practices regarding gender diversity and director term limits as part of their annual corporate governance disclosure, or alternatively explain why they have not implemented such policies and practices. The presumed rationale behind such a regime is that requiring disclosure will lead to more women on the boards and in senior management of issuers.

The "comply or explain" model implies that if an issuer has not implemented the policies and practices described in the Proposed Amendments, it does not have good governance practices. By requiring issuers who have not adopted such practices and policies to explain why they have not done so, the Proposed Amendments may unfairly expose those issuers to criticism over their governance practices, even if the issuers are establishing such practices based on their own circumstances and requirements and acting in their own best interests and those of their shareholders. The model does not take into account the possibility that some issuers may have particular circumstances and/or requirements which may not be in line with the practices and policies described in the Proposed Amendments. ATCO and CU believe that board function is critical to the successes of both companies, and so believe that issuers should have flexibility to adopt director election and composition practices that suit their particular needs and circumstances. Our client also believes a "one size fits all" approach to these matters, as implied by the Proposed Amendments, would eliminate this flexibility and ignore the unique circumstances and needs of issuers, and could lead to unintended consequences.

Representation of Women on Boards and in Senior Management

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. 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 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.

Director Term Limits

ATCO and CU are of the view that the implementation of director term limits as contemplated by the Proposed Amendments is especially problematic, as it is an inappropriate and unproven method of encouraging board effectiveness for all issuers. The imposition of director term limits on a board implicitly discounts the value of experience and continuity amongst board members and runs the risk of excluding experienced and potentially valuable board members as a result of an arbitrary determination. Furthermore, the imposition of rigid, prescribed term limits on the tenure of directors implies that boards cannot properly govern themselves, by usurping core functions of the board and replacing them with fixed criteria that may not adequately represent the interests of shareholders. The result would be to undermine the extensive efforts undertaken by issuers to define and implement customized governance and nomination practices.

Director term limits also create particular difficulties for controlled companies such as ATCO and CU. The ability to control an issuer through the election to the board of directors is a fundamental right of control, and as such controlled companies often have a higher number of long-standing directors than do other issuers. Encouraging director turnover and identification of director candidates based on factors other than individual qualifications and suitability infringes upon this right. ATCO and CU believe that the influence of a controlling shareholder at the board and committee levels is important to good governance and is consistent with the goals of protecting shareholders and promoting their long term interests. This influence should not be unduly restricted to accommodate social objectives not directly related to the protection and representation of shareholders.

Our client is of the view that the Proposed Amendments would serve little purpose for controlled companies while imposing additional costs and complexity in the process for electing directors, and ultimately not serving the best interests of the share owners of such companies as a whole. ATCO and CU are also of the particular view that a move to higher director turnover through the imposition of limitations on director terms is unnecessary, and could potentially have an adverse impact on board effectiveness, especially for controlled companies. ATCO and CU have found that having long-standing directors on their boards does not negatively impact board effectiveness, and instead contributes to boardroom dynamics such that both companies have for many years had consistently high-performing boards.

Conclusion

Our client believes that the policies and practices described in the Proposed Amendments would be overly prescriptive, and could potentially limit an issuer's ability to act in its best interests and those of its shareholders by pressuring an issuer to identify director and senior management candidates based on factors other than their own qualifications and suitability for a particular position. This could ultimately lead to individuals being elected to boards or appointed to senior management positions when they may not be the most qualified, and could potentially have an adverse impact on an issuer's board and senior management effectiveness, especially if companies lose highly effective board members due to director term limits. Our client further urges the OSC to consider the unique circumstances of controlled companies throughout its deliberations with respect to the Proposed Amendments.

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"