

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

BOARD MEETING
AGENDA ITEM SUMMARY

February 15, 2006

ACTION REQUIRED

AGENDA ITEM NO.IX.D.

- Information Only
 - Motion
 - Resolution
 - Executive Session
 - Other
-

TOPIC – Amendment to Board Policy 128 repealing provisions improperly restricting accountability for executive session decisional deliberations.

DISCUSSION (by Director Vazquez)

Chugach board members are responsible for making decisions that have multimillion-dollar impacts on our ratepayers. Important information intended to persuade the board to adopt a particular course of action is frequently provided in executive session or through other confidential channels that properly may not be appropriate for immediate public review or scrutiny.

Yet, unlike other governing bodies like the Anchorage Assembly, Chugach does not tape or keep any record of executive session deliberations and decisional materials that is routinely made public after a period of time. The only accountability for the veracity of the materials used to make a particular decision may frequently be the memory and personal files of the directors involved.

In March 2002 there was a controversy over confidential data regarding the value of potential labor negotiation savings targets not being provided to the board which at that time was being urged to extend labor contracts without negotiation. In apparent response to this event, Board Policy 128 (Confidentiality) was adopted by the Chugach board in October 2002 which among other things required Chugach directors to surrender confidential documents received and used during their board tenure even including their own notes.

This is not in the membership's interest because if this policy were to be actively enforced (and it hasn't been), the board could be pitched with anything in closed session, \$millions spent unwisely or wasted, and all materials then collected by management. Directors would then have nothing to rely on but memories of what commonly are complex presentations, data tables, and scenarios if future assessment of what the board was told were to be needed. This policy also is quite likely at variance with the fiduciary duty of a director to be prepared to defend and assess the outcomes of the decisions made while they are on the Chugach board. Furthermore, the increased duty of directors to exercise more careful oversight on management under Sarbanes Oxley mandate this reform to Board Policy 128.

This motion will repeal those sections of Board Policy 128 that improperly restrict the ability of directors to keep records of decisions and materials provided during their period of service on the board. Repeal of these sections in no way diminishes the fiduciary obligations of directors to keep

materials confidential that are properly classified confidential both during and after their period of service.

RECOMMENDATION (by Director Vazquez)

Motion 1: Move to waive seven-day rule

Motion 2: Move that Board Policy 128 be amended as follows:

C. Obligations Upon Termination of Employment and Board Membership.

1. ~~Directors and e~~Employees shall immediately return all confidential information or documents of the Association in their possession to the Association upon request of the Association, and, in any event, upon termination of their employment with the Association ~~or their membership on the Association's Board of Directors~~, including those in electronic format.

CHUGACH ELECTRIC ASSOCIATION, INC.

BOARD POLICY: 128

DATE: June 18, 2003

CONFIDENTIALITY

I. PURPOSE

To adopt policies and procedures to insure the protection of confidential information and documents of the Association, its customers and third parties with whom it does business.

II. CONTENT

A. Types of Confidential Information and Documents.

Though not necessarily limited to the list below, confidential information and documents of the Association will generally fall into one of the following classifications:

1. Attorney-client communications;
2. Attorney work product;
3. Statutory trade secrets;
4. Common law trade secrets;
5. Personnel records;
6. Information which Chugach is contractually required to keep confidential, including information belonging to third persons; and
7. Information discussed or disclosed in executive session.

Confidential information and documents of the Association may include, by way of example and without limitation: reports and surveys, studies, memoranda, confidential business information, marketing plans, information as to existing or future services, analyses, computer programs, financial projections, customer and supplier lists (including customer identity, rates, services and contract terms), confidential cost and pricing information, concepts, techniques, methods, systems, research, development or experimental work, work in process, operations, schedules of employee compensation, personnel records, and all copies thereof.

If a director or employee has any questions concerning what comprises confidential information and documents of the Association, they should consult with the Chief Executive Officer.

B. Obligations to Maintain Confidentiality.

1. Directors and employees shall not, during the term of their membership on the Association's Board of Directors or employment with the Association, or at any time thereafter, either directly or indirectly, disclose or permit the disclosure of, reproduce, or in any other way publicly or privately disseminate, any confidential information or documents of the Association to any third parties except as and to the extent expressly authorized by the Association in order to carry out their duties to the Association, or in the case of confidential information or documents belonging solely to customers of the Association and third parties with whom the Association does business, as may be expressly contractually authorized by those persons.
2. Directors and employees shall not, during the term of their membership on the Association's Board of Directors or employment with the Association, or at any time thereafter, make any use of any confidential information or documents of the Association (including, but not limited to, bids, awarding of contracts, or other information of a competitive nature, real estate transactions, personnel records, salary information) for their own purposes, such as for personal gain or advancement, or to the detriment of the Association.
3. Directors and employees shall not remove any confidential information or documents of the Association from the Association's facilities at any time during or after their membership on the Association's Board of Directors or employment with the Association except as necessary in the performance of their duties.
4. All confidential information or documents of the Association which are furnished to directors and employees by the Association, used by them on the Association's behalf, or generated or obtained by them during their membership on the Association's Board of Directors or employment with the Association shall be and remain the property of the Association.
5. Directors, at the discretion of the Board of Directors, and employees, at the discretion of the Chief Executive Officer, may be required to sign written confidentiality agreements in order to effectuate the terms of this policy.

6. This policy is intended to supplement, and does not supersede, those duties and obligations imposed upon directors and employees by the Alaska Uniform Trade Secrets Act, Alaska Stat. sec. 45.50.910, et seq., and all other applicable laws and regulations.
- C. Obligations Upon Termination of Employment and Board Membership.
1. Directors and employees shall immediately return all confidential information or documents of the Association in their possession to the Association upon request of the Association, and, in any event, upon termination of their employment with the Association or their membership on the Association's Board of Directors, including those in electronic format.
 2. The duties and obligations of directors and employees under this policy shall survive the termination of their membership on the Association's Board of Directors or their employment with the Association.
- D. Procedures for Waiver or Release of Confidential Information and Documents.
1. It is the general policy of the Association that the confidentiality which attaches to confidential information and documents of the Association shall continue indefinitely.
 2. Only the Association's Board of Directors, acting in its official capacity, and Chief Executive Officer have the authority to waive the confidentiality protections which attach to confidential information and documents of the Association or authorize the release of confidential information and documents of the Association as an exception to this policy.
 3. If a Director believes that it is in the best interests of the Association to waive the confidentiality protections of particular confidential information and documents of the Association, or to release particular confidential information and documents of the Association as an exception to this policy; or that particular trade secret or executive session information or documents are no longer legally entitled to confidential treatment, he or she may bring such matter to the attention of the Board of Directors, acting in its official capacity, for consideration and action.
 4. Nothing in this policy shall prohibit the Association from complying with obligations it may have under state and federal law, legal process issued pursuant thereto or lawful orders of governmental authorities, to disclose confidential information and documents of the Association.

III. RESPONSIBILITIES

- A. Each Director and employee shall comply with the letter and the spirit of this policy.
- B. The Chief Executive Officer shall inform all employees about the content of this policy and insure that it is complied with.
- C. Each Director and employee shall disclose any situation which violates, may violate, or could appear to violate the intent of this policy.
- D. Any Director or employee whose conduct violates this policy shall be subject to: (1) if Chief Executive Officer, termination by appropriate action of the Board of Directors in accordance with any contract of employment; (2) if an employee, termination by appropriate action of the Chief Executive Officer; or (3) if a Director, removal pursuant to Article IV, Section 7 of the Association's Bylaws.
- E. In addition to the disciplinary provisions of Section III.D, the Association may seek legal and equitable relief in any court of competent jurisdiction to prevent or restrain any disclosure, breach or threatened breach of this policy and the legal protections afforded to confidential information and documents of the Association by any current or former director, employee, their partners, agents, representatives, employers, employees, and all other persons acting for or with them. Equitable relief may include, but not be limited to, temporary restraining orders, preliminary injunctions, and permanent injunctions. The equitable remedies described above are in addition to, and not any limitation upon, all rights and remedies as the Association may be entitled under applicable law.

Date Approved: *18 June '03*

Attested: *John B. Jasper*
Secretary of the Board

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