

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

BOARD OF DIRECTOR'S MEETING
AGENDA ITEM SUMMARY

April 16, 2008

ACTION REQUIRED

AGENDA ITEM NO. IX.E.

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

TOPIC

Records Retention Policy – Revisions to Board Policy 128, Confidentiality

DISCUSSION

Proposed revisions to Board Policy 128, Confidentiality, were prepared by attorney Gordon Tans at the request of the Board. A memorandum from Mr. Tans to the Board dated April 11, 2008 discussing these proposed revisions has separately been provided to the Board.

A prominent feature of this proposal is an annual review and possible release of executive session recordings and associated documentation. Other categories of information are also scheduled for review on a periodic basis. By March 1 each year, the CEO and General Counsel are to report to the Board any concerns they have about releasing the prior year's executive session recordings and the other categories of confidential documents presented to the Board and due for potential release according to the schedule in the proposed policy revisions. After receipt of those reports, the Board may approve release of the information about which there are no concerns, and make a decision whether to approve release of any of the information about which concerns have been expressed. Both redlined and "clean" versions of the Policy are attached.

MOTION

Move to approve Board Policy 128 as revised as attached, eliminating the review and release of records of executive session recordings and associated documentation (Section II.E.1.a.) pending further discussion and consideration.

CHUGACH ELECTRIC ASSOCIATION, INC.

BOARD POLICY: 128

DATE: April 16, 2008

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 includes the foregoing items 1-7 which may consist of, 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,¹ 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,² personnel records, and all copies thereof.

¹ Except as provided in Board Policy 120, Requests for Association Information and Article XVII, Member Access to Information, Section 1 (a) of Chugach's Bylaws.

² Except as provided in Board Policy 120, Requests for Association Information and Article XVII, Member Access to Information, Section 1.(b) of Chugach's Bylaws.

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 and/or General Counsel.

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 information³) 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, subject to the following. Certain documents may be identified by the Association as being such a sensitive nature that they shall not be copied, removed from or sent outside the Association headquarters building in any form. In those instances, the documents shall at a minimum be marked as "Extremely Confidential and Sensitive Information; For Your Review Only. Do Not Copy or Remove from Association Premises." Board members shall be notified of the existence of this information in advance of any board meeting at which action is to be taken relating to information contained in these document(s) and the document(s) shall be made available for the board members to review at the Association headquarters building. A majority of all board members can vote to waive this requirement after discussion and advice from management and/or counsel/consultants, as appropriate. Employees will be advised by their supervisors of the identity of sensitive documents that cannot be copied, removed from or sent outside the Headquarters building in any form.

³ See footnote 2 above.

Additionally, pursuant to the Health Insurance Portability and Accountability Act (HIPPA) and Association Operating Policy 022, employee health care information cannot be disclosed to any individuals except as provided in that Act and Operating Policy.

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. Employees shall immediately return all confidential information and documents of the Association in their possession, including those in electronic format, to the Association upon request of the Association, and, in any event, upon termination of their employment with the Association.
2. The duties and obligations of directors and employees under this Policy shall survive the termination of 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, unless released according to this Policy.
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. At any time 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.

E. Scheduled Review and Release of Confidential Information and Documents Presented to Board

1. Confidential documents and confidential presentations given to the Board of Directors and tapes of executive sessions of the Board of Directors will be reviewed and released on the following schedule. For purposes of this Section II. E, "Board of Directors" includes any committee of two or more Directors created by the Board or the Bylaws. All releases of confidential information scheduled under this Section II.E. are subject to the procedures set forth in paragraphs E. 2 through 5 of this section.
 - a. Labor agreements. Collective bargaining agreements will be released when ratified by all parties. Analyses and other information describing (i) the ratified agreement and (ii) all voted on, but rejected agreements will be released six months after ratification of an agreement. This category does not include documents or information containing analysis and bargaining strategies prepared or used in connection with negotiations.
 - b. Financial, strategic, and long-term planning matters. Information concerning financial, strategic, and long-term planning matters, the release of which would have an adverse effect on the finances of the Association, will be released (i) one year after presentation to the Board of Directors or (ii) one year after termination of the circumstances that would cause release of the information to have an adverse effect on finances, whichever occurs last.
 - c. Personnel matters. Generally, confidential information concerning matters of personnel below the level of the Chief Executive Officer will not be released, except when determined by the Board, on a case-by-case basis, that it is in the interests of the Association to do so because it is a matter of serious concern and the members must be advised, such as a matter of misconduct involving substantial financial loss to the Association.
 - d. Matters involving prejudice to reputation. Release of confidential information that might prejudice the reputation and character of a person must be determined by the Board on a case-by-case basis.

- e. Labor analysis and strategy. Release of confidential information, analyses and strategies used in collective bargaining negotiations must be determined by the Board on a case-by-case basis.
 - f. Other. Release of any other confidential information must be determined by the Board on a case-by-case basis.
2. Annually, by March 1, the executive session recordings from the prior calendar year and any other items that became due for release or review in the prior calendar year under the schedule in paragraph E.1. will be reviewed by the General Counsel and the Chief Executive Officer, or their designees. Each will report to the Board any concerns they have that release of a document or other information will be harmful to the Association or any other person. In conducting this review they may consider, among other things, the effect the release may have on sensitive negotiations, personnel matters, matters in litigation, the finances of the Association, any person's reputation or character, contractual requirements of confidentiality, trade secrets, and protected health information under HIPAA. The General Counsel and CEO should identify any segments of confidential information that may be redacted to alleviate their concerns while releasing the remainder. They should also identify those documents, recordings and other items of information that they conclude may be released in whole.
 3. Upon consideration of the report of General Counsel and the CEO, the Board will decide whether to release, in whole or in part, the recordings, documents, and other items of information under consideration. The Board will keep in mind its general duties that its approval of disclosures should be in the best interests of the Association and that a release of information should be more beneficial than harmful to the Association's interests.
 4. Those recordings, documents, or other items approved for release will be so marked and made available to the members upon request. They will not otherwise be published, except by direction of the Board or CEO, or pursuant to paragraph II.E. 5.
 5. If any release of information under this policy triggers Securities Exchange Commission reporting requirements, timely reports will be made.
 6. The schedule and procedures set forth in this Section II.E. do not preclude a review and release at any time under Section II. D of this Policy.

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.
- F. The Chairman of the Board of Directors and the Chief Executive Officer are responsible for the administration of this Policy.

Date Approved: _____

Attested: _____
Secretary of the Board