

CHUGACH ELECTRIC ASSOCIATION, INC.
Anchorage, Alaska

BOARD MEETING
AGENDA ITEM SUMMARY

May 16, 2007

ACTION REQUIRED

AGENDA ITEM NO. XI.G.

Information Only
 Motion
 Resolution
 Executive Session
 Other

TOPIC

Board Policy 128- Confidentiality

DISCUSSION

At the May 9, 2007 Board Operations Committee meeting, the majority of the Committee recommended that Board Policy 128, Confidentiality, be amended so that the Policy does not require directors to return Confidential Documents, as defined in that Policy, to the Association upon request of the Association or upon termination of their service on the Board. Also, brackets that were not removed from a prior version have been removed. A redlined version showing these proposed changes is attached. This revision does not change the legal, fiduciary obligations of directors to keep these materials confidential both during and after their period of service on the Board.

MOTION

That the Board of Directors approved the changes to Board Policy 128 as shown in the attached redlined version.

CHUGACH ELECTRIC ASSOCIATION, INC.

BOARD POLICY: 128

DATE: ~~February 21, 2007~~ |

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,

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.

operations, schedules of employee compensation,² 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 {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."

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.

³ See footnote 2 above.

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.

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. ~~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.

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.

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

Date Approved: 02/21/07

Attested: _____ |
Secretary of the Board